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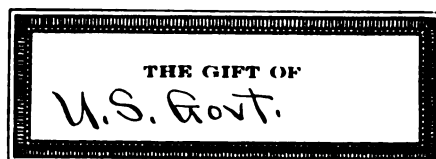
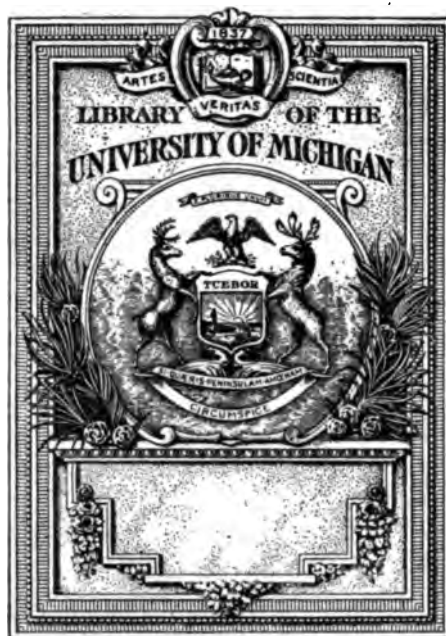
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**INTERSTATE COMMERCE COMMISSION REPORTS**

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**VOLUME 66**

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**DECISIONS OF THE  
INTERSTATE COMMERCE COMMISSION  
OF THE UNITED STATES**

**JANUARY TO MARCH, 1922**

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**REPORTED BY THE COMMISSION**

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**WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1922**

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# INTERSTATE COMMERCE COMMISSION REPORTS.

## INVESTIGATION AND SUSPENSION DOCKET No. 1409. CREOSOTE AND GAS-TAR OILS FROM CHICAGO AND ST. LOUIS TO ST. PAUL AND DULUTH.

*Submitted November 15, 1921. Decided January 3, 1922.*

Proposed increased rates on creosote oil and gas-tar oil from Chicago, Ill., and St. Louis, Mo., to St. Paul and Duluth, Minn., found justified.

*G. A. Hoffelder* for respondents.

*J. L. Roberts, E. A. Munson, and John L. Hagaman* for protestants.

### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

#### BY DIVISION 3:

By schedules filed to become effective October 1, 1921, respondents propose to increase the rates on creosote oil and gas-tar oil from Chicago, Ill., and St. Louis, Mo., and points taking the same rates, to St. Paul and Duluth, Minn., and points grouped therewith, to the level of the southbound rates between the same points. Upon protest of the Barrett Company, which is engaged in the production of these oils at Chicago and St. Louis, the schedules were suspended until January 29, 1922. Rates are stated herein in amounts per 100 pounds.

The present rates and the ton-mile earnings thereunder are shown in the following table:

Between—	Distance.	Rate north-bound.	Ton-mile earnings.	Rate south-bound.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Chicago and St. Paul.....	368	21	10.6	25.5	12.8
Chicago and Duluth.....	470	25.5	10.9	29.5	12.6
St. Louis and St. Paul.....	561	22.5	8	27	9.6
St. Louis and Duluth.....	714	32.5	9.1	37	10.4

Creosote oil and gas-tar oil are products of coal tar and are used in wood preserving. They load heavily, and move largely in tank cars. The price of creosote oil at time of hearing was 10 cents per gallon, or \$21 per ton. Its value ranges from \$800 to \$1,000 per car.

The history of the rate adjustment is as follows: Some 15 years ago a commodity rate of 12.5 cents was published from Chicago and Peoria to St. Paul; as increased on June 25, 1918, and August 26, 1920, this rate is now 21 cents. In March, 1918, a plant manufacturing these

oils was built at St. Louis Park, Minn., in the vicinity of St. Paul, and the carriers were requested to publish a commodity rate southbound. Theretofore there had been no movement of this traffic in that direction. After investigation the carriers decided to publish a rate of 15 cents from St. Paul to Chicago and to increase to that amount the northbound rate of 12.5 cents then in effect, which latter rate they regarded as "unduly depressed." On March 18, 1918, there were made effective from St. Paul rates of 15 cents to Chicago and Peoria, and 16 cents to St. Louis, but before the necessary fifteenth section applications could be filed with us seeking permission to increase the northbound rates to the same basis, the United States Railroad Administration assumed the initiative in rate making, and no further action toward increasing these rates was taken. After the termination of federal control the carriers were asked to reduce the southbound rates to the northbound basis. That application was denied and the tariff item here under suspension was later published. Increased rates to intermediate points published at or about the same time by the individual lines were not suspended, and a number of fourth section violations have resulted. The record indicates, however, that there are no consuming points for these products between Minneapolis and Chicago.

For the year ending September 1, 1921, one of the protestants shipped 111 cars of creosote oil and gas-tar oil from Chicago to St. Paul, the average weight of which was 80,862 pounds; another protestant for the period January 1 to June 1, 1921, shipped 43 cars, averaging 72,947 pounds, from Carrollville, Wis., to Minneapolis, St. Paul, and beyond; another protestant in 1920 shipped 6 cars from Chicago to St. Paul, and 18 cars from Moline, Ill., to St. Paul, the average weight of which was in excess of 80,000 pounds. Carrollville and Moline take the same rates as Chicago on this traffic. There is no showing of any movement of these products southbound from the twin cities or Duluth, and protestants assert that there is no such movement. Using an average weight of 80,000 pounds, the car-mile earnings on creosote oil from Chicago to St. Paul under the present rate are 42.2 cents.

Creosote oil is rated fifth class in western and official classification territories, although by exceptions to the classification the bulk of the movement in central territory is on rates which are 90 per cent of fifth class. The present commodity rates on these products are the same as or lower than the class-E rates between the same points, the latter being the lowest class rate in western territory. The proposed rates are slightly higher than the class-D rates. In the following table are shown the class-E and fifth-class rates, together with the percentages which the present and proposed commodity rates bear to the fifth-class rates:

	Fifth-class rate.	Class-E rate.	Commodity rate.		Percentage of commodity rate to fifth class.	
			Present.	Proposed.	Present.	Proposed.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Per cent.</i>	<i>Per cent.</i>
Chicago to St. Paul.....	34	22.5	21	25.5	62	75
St. Louis to St. Paul.....	36	23	22.5	27	63	75
Chicago to Duluth.....	37	27	25.5	29.5	69	80
St. Louis to Duluth.....	44	32.5	32.5	37	74	84

Based on the classification rating and the so-called Disque scale of class rates now in effect in central territory, the rates for the distances here considered would be as follows: Chicago to St. Paul 32 cents, to Duluth 34 cents; St. Louis to St. Paul 37.5 cents, to Duluth 42 cents.

Respondents cite rates from Chicago to St. Paul on a number of commodities moving in tank cars, of which the following are typical: Coconut oil, 25.5 cents; crude glycerine, 27 cents; corn syrup and vinegar, 29 cents; benzine, 33 cents; sulphuric acid and lard oil, 34 cents. Rates on refined petroleum for similar hauls are cited, some of which rates were fixed by us. The rate from Chicago to St. Paul and Duluth, for example, is 33 cents, yielding ton-mile earnings of 16.6 mills and 14.1 mills, respectively.

Respondents refer to the fact that mileage must be paid to owners of the tank cars whether the cars are returned empty or under load. It appears, however, that one of the protestants has a coke oven midway between Chicago and Minneapolis at which its cars are stopped off and returned to Chicago loaded with tar. Another protestant brings its tank cars back from St. Paul to its plant near Racine, Wis., or to Chicago filled with tar.

Protestants assert that the rates on creosote oil should be no higher than on tar and pitch, this being, they claim, the basis generally prevailing in the southeast. The rates on tar and pitch are, from Chicago and St. Louis to St. Paul, 17 cents and 17.5 cents, respectively; to Duluth they are 20.5 cents and 26.5 cents. Protestants also show that the present commodity rates on creosote oil in southern classification territory from a number of producing points to consuming points range from 20 per cent to 50.7 per cent of the class rates between the same points. This commodity is rated sixth class in the southern classification.

In *Lewis Mfg. Co. v. A., B. & A. Ry. Co.*, 57 I. C. C., 410, we found that a rate of 21 cents prior to June 25, 1918, on creosote oil from New Orleans, La., to Birmingham, Ala., 355 miles, was not unreasonable. That rate has since been subjected to the general rate increases of 1918 and 1920, and at present is 33 cents.

We find that the schedules under suspension have been justified. An order vacating the order of suspension and discontinuing the proceeding will be entered.



No. 8418.<sup>1</sup>

RAILROAD COMMISSION OF LOUISIANA

v.

ARANSAS HARBOR TERMINAL RAILWAY COMPANY  
ET AL.

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*Submitted March 22, 1921. Decided December 12, 1921.*

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On further hearing, reasonable maximum differentials prescribed on shipments of wheat, flour, and articles taking the same rates to and from points in Texas differential territory. Former report, 48 I. C. C., 312.

*Clarence E. Gilmore and O. D. Hudnall* for Railroad Commission of Texas.

*A. C. Fonda* for defendants.

*A. C. Leffingwell* for Texas Chamber of Commerce and Waco Chamber of Commerce.

REPORT OF THE COMMISSION ON FURTHER HEARING.

*HALL, Commissioner:*

These proceedings have been reopened on petition of the defendants for modification of our order of January 22, 1918, so as to permit them to eliminate from item No. 1580 of agent Fonda's tariff I. C. C. No. 89 the exceptions providing for maximum rates on wheat, flour, and articles taking the same rates to and from points in Texas differential territory. This item is now carried in agent Fonda's I. C. C. No. 100. Rates will be stated in cents per 100 pounds.

In our report and order of January 22, 1918, 48 I. C. C., 312, we prescribed the rates on wheat, flour, and articles taking the same rates to and from points in Texas common-point territory. These rates as increased under general order No. 28 and Ex Parte 74 are named in item 1575 of Fonda's I. C. C. No. 100. On shipments to and from points in differential territory we also prescribed certain differentials to be added to the common-point rates.

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<sup>1</sup> This report also embraces No. 3918, Railroad Commission of Louisiana v. St. Louis Southwestern Railway Company et al.; No. 8290, Railroad Commission of Louisiana v. St. Louis, San Francisco & Texas Railway Company et al.; and Investigation and Suspension Dockets No. 710, Eastern Texas Class Rates, and No. 729, Class Rates to Shreveport, La.

The highest rates prescribed on wheat and flour to and from points in common-point territory were 19 and 22 cents, respectively, for distances over 200 miles. The highest differentials were 7.5 and 10 cents, respectively, for distances over 300 miles in differential territory. Thus, on a shipment moving 200 miles or more in common-point territory and over 300 miles in differential territory, the rates would be 26.5 and 32 cents, respectively. Under general order No. 28 of the Director General of Railroads, rates on grain and grain products were increased 25 per cent, with a maximum increase of 6 cents, and this percentage was added to the rates to and from points in common-point territory and also to the differentials. The resultant rate on a shipment to or from a point in differential territory theretofore subject to the 26.5-cent or the 32-cent rate would represent an increase of more than 6 cents.

In order to limit this increase to 6 cents an exception was incorporated in item No. 1580 setting forth a formula for determining the rates in effect on and after June 25, 1918. This exception, as modified when the increased rates authorized under Ex Parte 74 became effective, is given in the margin.<sup>1</sup> At best the operation of this formula is complicated and difficult for shippers and defendants' agents to understand and has been the cause of much dissatisfaction and complaint.

<sup>1</sup> Exception. Maximum Rates on Flour, Wheat, or Articles Taking Same Rate.

(1) Where the Commodity rate on Flour, Wheat, or articles taking same rates, as provided in Item No. 1575, or reissues, plus the Differential provided in Item No. 1580, or reissues, equals 40½ cents or less the rate so determined shall apply.

(2) Where the Commodity rate on Flour, Wheat, or articles taking same rates, as provided in Item No. 1575, or reissues, plus the Differential provided in Item No. 1580, or reissues, exceeds 40½ cents the commodity rate factor, and the differential factor for basing the through rate shall be as shown in Table of Rates in Paragraph (3), and to the sum of such factors 8 cents per 100 pounds shall be added to make the through rate.

(3) Table of Rates to be applied as provided in Paragraph (2):

When the Separate Commodity Rate or Differential is—	The Rate Factor, or Differential Factor, for basing through rate will be—	When the Separate Commodity Rate or Differential is—	The Rate Factor, or Differential Factor, for basing through rate will be—
2.....	1½	24½.....	19½
3½.....	2½	25½.....	20½
4.....	3½	26½.....	21
5½.....	4	27.....	21½
6.....	5½	27½.....	22½
7.....	5½	29.....	23
9.....	7	29½.....	23½
10.....	8	30½.....	24½
11.....	9	31.....	25
13.....	10	32½.....	25½
13½.....	11	33.....	26½
15½.....	12	36½.....	29
17.....	13½	37.....	29½

Defendants proposed in their applications to eliminate this exception, which would result in the straight application of the rates named in item 1575 and the differentials named in item 1580. It would result in increases on wheat from 0.5 cent to 2 cents and on flour from 0.5 cent to 3 cents on shipments to and from many points in differential territory.

The Railroad Commission of Texas agreed that the exception should be eliminated but protested against the resulting increase in rates. At the hearing it submitted a scale of differentials to be substituted for those named in item 1580 which are those previously prescribed by us as increased under general order No. 28 and Ex Parte 74. Below are the two scales:

Haul.	Flour.		Wheat.	
	Present.	Proposed.	Present.	Proposed.
	Cents.	Cents.	Cents.	Cents.
25 miles and less .....	2	*2	2	*2
50 miles and over 25 miles .....	4	*4	3.5	*3.5
75 miles and over 50 miles .....	6	*6	5.5	*5.5
100 miles and over 75 miles .....	9	8.5	7	*7
150 miles and over 100 miles .....	11	10	9	8
200 miles and over 150 miles .....	13	11	9	8
250 miles and over 200 miles .....	13.5	*11.5	10	*9
300 miles and over 250 miles .....	15.5	*12.5	10	*9
Over 300 miles .....	17	*14	13	*11

The figures prefixed with an asterisk are said to effect no change in the present rates to or from points in differential territory. For example, the maximum common-point rate on flour is 37 cents, and the maximum differential is 17 cents, a total of 54 cents. Under the exception in item 1580 this becomes 51 cents, or the same as the rate based on the common-point rate of 37 cents plus the proposed differential of 14 cents. Where the figures are not so prefixed reductions or increases of 0.5 cent and 1 cent will result. A careful check by the Texas commission is said to indicate that these will offset each other and that the net revenues will remain substantially the same. The representatives of defendants and the shippers expressed themselves as being satisfied with the proposed scale and we see no objection to it.

Upon consideration of the record now before us we are of opinion and find that section IV (14) of our order of January 22, 1918, should be modified, in so far as it prescribed rates on wheat, flour, and articles taking the same rates to or from points in interstate differential territory, by substituting for the maximum differentials there prescribed, as subsequently increased under general order No. 28 and Ex Parte 74, the following maximum differentials which we find

will be just and reasonable for movements of the commodities named between Shreveport and points in Texas:

For hauls in differential territory.	Flour and articles taking same rates.	Wheat and articles taking same rates.
	<i>Cents.</i>	<i>Cents.</i>
25 miles and less .....	2	2
50 miles and over 25 miles .....	4	3.5
75 miles and over 50 miles .....	6	5.5
100 miles and over 75 miles .....	8.5	7
150 miles and over 100 miles .....	10	8
200 miles and over 150 miles .....	11	8
250 miles and over 200 miles .....	11.5	9
300 miles and over 250 miles .....	12.5	9
Over 300 miles .....	14	11

It is understood, of course, that the reductions required in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, are to be applied to the above differentials.

An appropriate order will be entered.

66 I O C

No. 10856.

UTAH STATE AUTOMOBILE ASSOCIATION

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted October 16, 1920. Decided December 28, 1921.*

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Rates on refined gasoline, in carloads, from the midcontinent field, Colorado, Wyoming, and California, to Salt Lake City, Ogden, and Provo, Utah, found unreasonable. Reasonable rates prescribed.

*H. W. Prickett* for complainant.

*Clifford Thorne* and *Walter R. Scott* for Western Petroleum Refiners Association; *B. W. Carmichael* for California Petroleum Exchange and Independent Petroleum Marketers Association of California; and *W. H. Folland* for city of Salt Lake, interveners.

*E. N. Clark*, *George H. Smith*, *J. C. McMurray*, *G. H. Baker*, *H. W. Klein*, and *J. V. Lyle* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

EASTMAN, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued. We have reached conclusions differing from those recommended by him.

Complainant, a corporation, alleges by complaint filed August 13, 1919, that defendants' rates on gasoline and other refined products of petroleum, in carloads, from points in California, Colorado, Kansas, Missouri, Oklahoma, and Wyoming to Salt Lake City, Ogden, and Provo, Utah, are unreasonable, unjustly discriminatory, and unduly prejudicial; and that their rates on petroleum crude, gas, and fuel oils, in carloads, from points in California and Wyoming to these destinations unduly prefer the Utah Oil Refining Company to the prejudice and disadvantage of complainant. We are asked to establish reasonable and nonprejudicial rates on gasoline and other refined products of petroleum for the future. The

66 I. C. C.

Board of Commissioners of Salt Lake City, the Western Petroleum Refiners Association, the California Petroleum Exchange, and the Independent Petroleum Marketers Association of California intervened in complainant's behalf. Rates are stated herein in cents per 100 pounds, except as otherwise stated, and do not include the general increases of 1920. The rates to Salt Lake City, which, with certain minor exceptions, apply also to Ogden and Provo, will be taken as representative. Unless otherwise indicated the term crude oil will be understood to include fuel and gas oils, and the term gasoline as including other refined products of petroleum.

The Utah Oil Refining Company, hereinafter called the refining company, operates a large refinery at Salt Lake City. It obtains crude oil in the Wyoming fields from the Mid-West Refining Company and sells all its commercial gasoline to the Continental Oil Company. The last-named company supplies jobbers throughout the state of Utah, and also operates a large number of retail distributing stations. Complainant asserts that, although the local product is of inferior quality and sold at an excessive price, the spread between the rates from California and Wyoming on crude and refined oils is so great as to prevent independent jobbers from shipping gasoline to Salt Lake City and selling it at a profit in competition with the Continental Oil Company. It contends that the rates on gasoline from the California and Wyoming fields should not exceed the corresponding rates on crude oil by more than 5 cents, and that the rates on gasoline from the midcontinent field in Kansas and Oklahoma should not be more than 20 cents higher than the gasoline rates from the Casper, Wyo., district. The Western Petroleum Refiners Association, intervener, contends that the rate on gasoline from the midcontinent field to Salt Lake City is unreasonable, and also that it is improperly related to the rates on crude oil from Wyoming and California. It appears that the rates on crude oil from the midcontinent and Colorado fields to Utah are not lower than the corresponding rates on refined oils. Defendants concede that the spreads between the rates on crude oil and gasoline from the California and Wyoming fields are abnormal; but urge that the rates on gasoline are reasonable, that those on crude oil are too low, and that the relationship should be modified, if at all, by increasing the latter rates. They admit that, considering the volume of movement, the rates on crude oil yield some profit.

The rates on crude oil from representative points in California and Wyoming to Salt Lake City and comparative rates between various other points shown in complainant's exhibits are as follows:

68 I. C. C.

From—	To—	Distance.	Rate.	Earnings per ton-mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Fort Steele, Wyo.....	Salt Lake City.....	360	20.5	11.39
Rock River, Wyo.....	do.....	424	23	10.85
Casper, Wyo.....	do.....	740	34.5	9.32
Greybull, Wyo.....	do.....	799	39.5	9.88
Los Angeles, Calif.....	do.....	784	29.5	7.53
Wilmington, Calif.....	do.....	810	29.5	7.28
San Francisco, Calif.....	do.....	819	34	8.3
Boaz, Calif.....	do.....	954	36	7.55
Betteravia, Calif.....	do.....	992	38.5	7.76
Bakersfield, Calif.....	San Diego, Calif.....	565	20	10.96
El Segundo, Calif.....	Avocado, Calif.....	425	20	9.41
Casper, Wyo.....	Pueblo, Colo.....	461	34.5	14.96
Do.....	Florence, Colo.....	492	27	10.93
Betteravia, Calif.....	Phoenix, Ariz.....	677	32	9.45
Coffeyville, Kans.....	Denver, Colo.....	678	44.5	12.12
Oleum, Calif.....	Portland, Oreg.....	719	32	8.9
Los Angeles, Calif.....	Klamath Falls, Oreg.....	786	32	8.14
El Segundo, Calif.....	El Paso, Tex.....	831	39.5	9.51
Olig, Calif.....	Globe, Ariz.....	958	34.5	7.2
Coffeyville, Kans.....	Deming, N. Mex.....	990	39.5	7.98
Do.....	Douglas, Ariz.....	1,156	39.5	6.83
Okmulgee, Okla.....	Tucson, Ariz.....	1,191	44.5	7.47
Do.....	Nogales, Ariz.....	1,251	48.5	7.88
Coffeyville, Kans.....	Phoenix, Ariz.....	1,309	53.5	7.82

Complainant also calls attention to relatively lower rates on crude oil from the midcontinent and Wyoming fields to the east and south and contends that, differences in traffic and operating conditions considered, the comparisons tend to establish the reasonableness of the rates to Salt Lake City. Defendants endeavored to show that many of the comparative rates cited by complainant are depressed by the competition of rival carriers and producing sections and by competition with coal. They explain that the rates to Salt Lake City on crude oil were established to foster the refinery and to induce the use of fuel oil instead of coal by large consumers.

The refining company established a small plant at Salt Lake City in 1909 for refining oil produced at Spring Valley and Leroy, Wyo., 132 and 139 miles distant, from which points a rate of 20 cents applied. The production was small and soon ceased. Thereafter the refining company secured crude oil from Electra, Tex., at a rate of 55 cents, and from California at a rate of 25 cents, until it became associated with the Mid-West Refining Company, which largely controls the distribution of crude oil produced in the Wyoming fields. Upon representation of the refining company that a reduction in the crude-oil rate of 55 cents from Casper and Greybull was necessary to enable it to operate, defendants established rates of 35 and 30 cents, respectively, from these points, effective March 1, 1918. These rates as well as all others on petroleum oils were increased 25 per cent on June 25, 1918, but shortly thereafter a uniform increase of 4.5 cents was substituted for the percentage increase, resulting in rates of 39.5 cents from Greybull and 34.5 cents from Casper. Coincident with the development of oil wells

at Rock River and Fort Steele, rates of 23 and 20.5 cents were made effective from those points, respectively, on May 9, 1919. During the year ended October 31, 1919, the movement of crude oil from the Casper, Rock River, and Fort Steele districts to Salt Lake City aggregated 2,801 carloads, of which 572 moved from Fort Steele, 290 from Rock River, and 1,939 from Casper.

The rate on crude oil from southern California points to Salt Lake City and vicinity was reduced several years ago from 40 to 25 cents upon the request of a large smelting company, in order that the smelters might profitably use oil for fuel in lieu of short-haul Utah coal. For a considerable period shipments under this rate amounted to several cars daily, but it is said that the smelters now procure most of their fuel oil from the refining company. During the year ended September 30, 1919, only 22 carloads of fuel oil moved from California to Salt Lake City over the Los Angeles & Salt Lake route, but 121 carloads of so-called petroleum gas oil consigned to the refining company were handled over this route at the same rate. These shipments, complainants assert, consisted of "tops" or oils containing from 90 to 95 per cent of gasoline. During the year ended June 30, 1919, only 12 carloads of crude oil were shipped from Southern Pacific stations in California to Salt Lake City, but 306 carloads of fuel oil were shipped to the near-by points of Garfield and Arthur, Utah.

In *Pacific Creamery Co. v. S. P. Co.*, 29 I. C. C., 405, 34 I. C. C., 586, we found that traffic and operating conditions between Arizona and the Los Angeles and Bakersfield districts in California were fairly comparable with those between the same districts and Utah. Upon second rehearing, 42 I. C. C., 93, we prescribed rates on fuel oil from these districts to certain Arizona points which, adding the 4.5-cent increase made by the Director General of Railroads, compare with the assailed rates to Salt Lake City, as follows:

From—	To—	Distance.	Rate.
		<i>Miles.</i>	<i>Cents.</i>
Fort Steele.....	Salt Lake City.....	280	20.5
Bakersfield.....	Kingman.....	372	27
Rock River.....	Salt Lake City.....	424	23
Bakersfield.....	Phoenix.....	492	32
Do.....	Jerome Junction.....	526	32
Do.....	Tucson.....	671	34.5
Do.....	Hayden.....	699	34.5
Casper.....	Salt Lake City.....	740	34.5
Los Angeles.....	do.....	784	29.5
Bakersfield.....	Bisbee.....	786	34.5
Do.....	Douglas.....	799	34.5
Greybull.....	Salt Lake City.....	799	39.5
Wilmington.....	do.....	810	29.5
San Francisco.....	do.....	819	34
Bakersfield.....	Clifton.....	906	39.5
Do.....	Morenci.....	914	39.5
Boas.....	Salt Lake City.....	964	36
Betteravia.....	do.....	992	38.5



Judged by this comparison, the rates to Salt Lake City from Fort Steele, Rock River, and the California points appear somewhat low, but those from Casper and Greybull do not.

The rates assailed on gasoline and certain comparative rates shown of record are as follows:

From—	To—	Distance.	Rate.	Earnings per ton-mile.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Florence.....	Salt Lake City.....	593	66.5	22.43
Casper.....	do.....	740	74.5	20.14
Greybull.....	do.....	799	74.5	18.65
Wilmington.....	do.....	810	84	20.74
Boaz.....	do.....	954	89.5	18.76
Kansas field.....	do.....	1,227	94.5	15.4
Oklahoma field.....	do.....	1,294	94.5	14.51
Salt Lake City.....	Butte, Mont.....	434	54.5	25.11
Casper.....	Pueblo, Colo.....	461	41.5	18
Do.....	Clayton, N. Mex.....	680	51.5	15.14
Do.....	Ottumwa, Iowa.....	878	44.5	10.14
Do.....	Spokane, Wash.....	911	84.5	18.55
Greybull.....	Clayton, N. Mex.....	882	56.5	12.81
Do.....	Raton, N. Mex.....	831	62.5	15.04
Do.....	Spokane, Wash.....	709	74.5	21.01
San Francisco.....	Cheyenne, Wyo.....	1,266	89.5	14.14
Boaz.....	Leadville, Colo.....	1,326	89.5	13.5
Oklahoma City, Okla.....	Cheyenne, Wyo.....	856	51.5	11.8
Cushing, Okla.....	Raton, N. Mex.....	632	57.5	18.19
Do.....	Denver, Colo.....	709	51.5	12.4
Do.....	Minot, N. Dak.....	1,226	75.5	12.3

The rate of 84 cents from Wilmington and other points in the Los Angeles and San Francisco districts equals the former fifth-class rate of 79.5 cents plus the uniform increase of 4.5 cents. The present fifth-class rates are 99.5 cents from San Francisco and \$1.25 from Los Angeles.

The former rate of 62 cents from Florence to Salt Lake City was approximately 62.5 per cent of the fifth-class rate of 98 cents from the Missouri River to Salt Lake City, that being the usual basis for rates from Colorado common points to Utah.

The 74.5-cent rate from Casper and Greybull reflects the uniform increase of 4.5 cents in the commodity rate of 70 cents established from Casper in 1914 and from Greybull in 1916. Prior to 1914 the rate from Casper was 80 cents. The fifth-class combination rate from Casper to Salt Lake City is \$1.515.

The rate of 94.5 cents from the midcontinent field is a blanket rate applying from Missouri River territory to California and intermediate points west of the eastern portion of Colorado and is likewise 4.5 cents higher than the rate in effect prior to June 25, 1918. The average distance to Salt Lake City from a number of representative points in the midcontinent field is 1,268 miles. From Cushing, a typical point, the same rate applies to points in a territory more than 1,300 miles wide between Bellevue, Colo., 689 miles, and San

Francisco, more than 1,900 miles from Cushing. The ton-mile earnings from Cushing to the four points named are as follows:

		Ton-mile earnings.
To Bellevue, Colo.....	689 miles.....	27.4 mills
To Salt Lake City.....	1,219 miles.....	15.5 mills
To Reno, Nev.....	1,793 miles.....	10.5 mills
To San Francisco, Calif.....	1,936 miles.....	9.4 mills

Complainant and interveners urge that traffic and operating conditions between Salt Lake City and California are less favorable than between the midcontinent field and Utah, and that this situation justifies a substantial difference between the rates from the midcontinent field to Utah and to California. Their contention that the rate on gasoline from the midcontinent field to Salt Lake City should not exceed 59.5 cents rests on the theory that the rate from Casper should be 5 cents higher than the corresponding rate on crude oil and the rate from the midcontinent field 20 cents higher than from Casper, that being the usual differential between rates from the midcontinent and Wyoming fields. They observe that a rate of 80 cents from the midcontinent field to Salt Lake City would yield the same ton-mile earnings as a rate from Rock River to Salt Lake City 5 cents higher than the crude-oil rate of 23 cents, and suggest that in view of the great disparity in distance a rate of 59.5 cents would be properly related to such a rate from Rock River. The rate from the midcontinent field is 43 cents higher to Salt Lake City than to Cheyenne and to Denver and other Colorado common points. An exhibit submitted by the Western Petroleum Refiners Association, intervener, indicates that if the rates on gasoline from the midcontinent field to Salt Lake City bore the same relationship to those to Colorado common points that all commodity rates from the Missouri River to Denver bear to the corresponding rates to Salt Lake City, the resulting rate would be 82 cents, and that if the comparison were confined to commodities rated fifth class, it would be 81 cents. Complainant further shows that the division accruing to carriers east of Ogden out of the present joint rate is approximately 48.5 cents and that the earnings per car-mile, loaded and empty movement combined, under the former rate of 90 cents would be materially higher than defendant's average earnings on all traffic for the year ended December 31, 1917, for an average haul of only 272 miles.

In addition to the foregoing comparisons with rates on gasoline between other points, and with rates on crude oil, complainant offered many exhibits, consisting largely of operating statistics and of comparisons with rates from the midcontinent field to eastern and southern destinations, with rates on other commodities, such as sulphuric acid, nitrate of soda, molasses, etc., and with the fifth-class rates. The history of the rates assailed, the competitive elements entering into their establishment, the difficulties and expenses

of operation, the hazards of the traffic, the claims attributable thereto, the return empty movement of cars, the traffic density, etc., were shown in great detail by defendants.

Analysis of these numerous exhibits would unduly extend this report. Because of dissimilarity of conditions, the rates assailed are not fairly comparable with those from the midcontinent field to eastern and southern destinations. The comparisons with fifth-class rates are based upon the adjustment prevailing prior to June 25, 1918, since which date the class rates have been increased 25 per cent, while the rates on all petroleum products have been uniformly increased 4.5 cents. Prior to these increases the gasoline rates from the midcontinent field and from Los Angeles to Salt Lake City, for example, were 90 per cent and 81.1 per cent, respectively, of the fifth-class rates. The present percentages are 76.6 and 68.5, respectively. Any relation that may have existed prior to June 25, 1918, between the fifth-class rates and the commodity rates on petroleum products has been so disturbed as to make such comparisons of little significance. As we have found in other cases, moreover, there is no recognized or fixed relationship between the rates on petroleum products and the fifth-class rates.

Although the rates on gasoline from California and Missouri River territory to Salt Lake City are higher than those on numerous other commodities, some of which are shipped in tank cars, defendants show that the earnings per gross ton-mile on gasolines from California are no higher than those under commodity rates on certain selected articles rated fifth class, based on the average loading and making due allowance for the relative empty-car movement; and that they are lower in relation to the rates on the same articles than from California to El Paso, Tex., or to points in Arizona and New Mexico.

Typical rates on refined oils from California to points in Arizona found not unreasonable in *Pacific Creamery Co. v. S. P. Co.*, *supra*, to which have been added the 4.5-cent increase made by the Director General of Railroads, compare with the assailed rates on gasoline to Salt Lake City as follows:

From—	To—	Distance.	Rates.
		<i>Miles.</i>	<i>Cents.</i>
Bakersfield.....	Kingman.....	872	76.5
Do.....	Phoenix.....	492	87.5
Florence.....	Salt Lake City.....	593	66.5
Bakersfield.....	Tucson.....	671	87.5
Do.....	Hayden.....	699	109.5
Casper.....	Salt Lake City.....	740	74.5
Bakersfield.....	Bisbee.....	786	112.5
Greybull.....	Salt Lake City.....	799	74.5
Wilmington.....	do.....	810	84
Bakersfield.....	Clifton.....	906	99.5
Boaz.....	Salt Lake City.....	954	59.5
Kansas field.....	do.....	1,227	94.5
Oklahoma field.....	do.....	1,294	94.5

The following table indicates the spread between the rates on crude oil which were finally prescribed in the *Pacific Creamery Case* and the rates on refined oils which were found not unreasonable in the same case:

From—	To—	Spread.
		Cents.
Bakersfield.....	Kingman.....	49.5
Do.....	Phoenix.....	55.5
Do.....	Tucson.....	53
Do.....	Hayden.....	75
Do.....	Bisbee.....	78
Do.....	Clifton.....	60

As stated, the rate westbound from the midcontinent field and Missouri River points is blanketed to California and intermediate territory west of eastern Colorado. The rate to Spokane, Wash., and to north Pacific coast points is \$1.095.

In *Midcontinent Oil Rates*, 36 I. C. C., 109, we said at page 123:

The rate now in effect from the Kansas group to Salt Lake City is 94 cents, and from the Oklahoma group 99 cents. Both these rates appear high; they are but slightly less than the fifth-class basis. There is no complaint upon the part of the Kansas refiners. The gravamen of the complaint of the Oklahoma refiners is that they are required to pay 5 cents over the rate from Kansas points. Beyond calling attention to the ton-mile earnings no evidence was introduced by the complainants touching the reasonableness of either rate. The defendants showed by comparative statements that the rates are in line with rates from competing points, such as Casper and Lander, in the state of Wyoming, and Florence, in the state of Colorado. We are of opinion and so conclude and find upon the record that the rate from both points should not exceed the present rate from the Kansas points. In other words, in a distance of over 1,200 miles, on the average, a differential in the Kansas rates over the Oklahoma rates should not be maintained.

Prior to our decision, however, the carriers had voluntarily reduced the rates from both fields to 90 cents, that being the rate to the California terminals. The rate to Salt Lake City from Lander was then 80 cents and from Casper 75 cents, but each of these rates was reduced 5 cents shortly thereafter. The rate from Florence was 62 cents. In *Culmers Co. v. A., T. & S. F. Ry. Co.*, 50 I. C. C., 90, we found that the rates charged on certain shipments from points in the midcontinent field to Salt Lake City between September 17, 1913, and July 14, 1915, were unreasonable, as alleged, to the extent that they exceeded the rate of 90 cents to the California terminals, and awarded reparation on that basis. This finding was based largely upon the paragraph quoted above from *Midcontinent Oil Rates*, *supra*. Defendants urge that in view of our findings in these cases and of the fact that there has been no substantial change in

relationships, it must follow that the present rates from the mid-continent, Wyoming, and Colorado fields are reasonable.

The facts of record showing the volume of movement of crude and refined oils from the several fields tend to substantiate complainant's allegation that sales of gasoline in Salt Lake City are practically restricted to the product of the refining company. The receipts of crude oil aggregate many hundreds of carloads annually, but the movement of gasoline is negligible. The two independent jobbers in Salt Lake City procure their gasoline from the Continental Oil Company. In former years one of them purchased gasoline in the midcontinent field and in California.

The spread between the rates on crude oil and gasoline from the California and Wyoming fields ranges from 35 to 54.5 cents. In *Mid-continent Oil Rates*, *supra*, we found that rates of 15 and 20 cents on low-grade oils would be reasonable from the midcontinent field to St. Louis and Chicago, respectively, as compared with corresponding rates of 20 and 25 cents, respectively, on the higher-grade oils, and stated that "what we have found with respect to rates on the lower grades of oil when shipped to St. Louis and Chicago should be applied in just relationship to other points." In various later cases involving rates from the midcontinent field the same differential of 5 cents between the rates on the crude and the refined oils has been prescribed. As has already appeared, however, the differentials which were in effect approved in the *Pacific Creamery Case* were far greater. In *Great Falls Gas Co. v. C., B. & Q. R. R. Co.*, 50 I. C. C., 357, we found reasonable a rate of 45 cents on crude, fuel, and other heavy petroleum oils from Cowley and Greybull, Wyo., to Great Falls, Mont., 294 and 337 miles, respectively. The contemporaneous rate on refined oils was 60 cents. In an earlier case, *Board of Railroad Commissioners of Montana v. C., B. & Q. R. R. Co.*, Docket No. 5448, unreported, we held that rates of 30 cents on heavy oils and 60 cents on light oils from Cowley to Great Falls were not unreasonable; and in *Mutual Oil Co. v. C., B. & Q. R. R. Co.*, 38 I. C. C., 221, we prescribed those rates from Cowley to Coffee Creek and Highwood, Mont., 256 and 322 miles, respectively.

Summarizing the situation, there exists at Salt Lake City a spread between the assailed rates on gasoline and the corresponding rates on crude oil which in some cases is far in excess of the spread approved in the *Midcontinent Oil Case*. Defendants concede that from California and Wyoming fields this spread is abnormal and ought to be reduced, but think this should be accomplished by raising the crude-oil rates, which, they say, are too low. It appears, however, that the latter are not far out of line with the crude-oil rates pre-

scribed in the *Pacific Creamery Case*, although they are undoubtedly low in certain instances. On the other hand, the spread between the gasoline and the crude-oil rates at Salt Lake City does not exceed the spread which was in effect approved in the *Pacific Creamery Case*; the assailed gasoline rates compare favorably with the gasoline rates which were found not unreasonable in that case; and the gasoline rate from the midcontinent field to Salt Lake City is at the level which was not condemned in the *Midcontinent Oil Case* or later in the *Culmers Case*.

Examination of the decision, however, shows that the real issue in the *Midcontinent Oil Case*, so far as the rates to Salt Lake City were concerned, was whether the rates from Oklahoma and from Kansas should be the same, and toward this issue rather than toward the level of the rates the evidence was directed. Nor does it appear that the relationship between the gasoline and crude-oil rates received consideration in the *Pacific Creamery Case*; and the evidence in that case was deemed insufficient to justify a reduction in the rates on refined oil because of comparisons with the rates on other commodities rated fifth class, although crude oil as well as refined oil is so rated. On the other hand, the fact that in the *Midcontinent Oil Case*, and in subsequent cases which have followed it, a differential of 5 cents was established between the rates on crude and refined oils does not warrant the conclusion that this should be the differential under all circumstances and particularly where the rates are larger in amount.

We are impressed by the evidence in this case that gasoline does not move to Salt Lake City in any substantial quantities upon the rates now in effect. The maintenance of rates at a high level is obviously of no direct advantage to the carriers where the traffic fails to move. And we are also impressed by the fact that no good reason has been shown for blanketing the rate of 94.5 cents from the midcontinent field all the way from San Francisco to points in western Colorado. This rate, as applied to Salt Lake City, compares unfavorably with the rate of 51.5 cents which is charged to Denver, Cheyenne, and other Colorado common points. Upon consideration of all the facts of record we think the evidence shows that the rates on gasoline, using the word in its literal sense, from the midcontinent, Wyoming, Colorado, and California fields to Salt Lake City and related points are unreasonable. Little evidence was offered concerning the rates on refined products of petroleum other than gasoline, and there is no basis for a conclusion that these rates are unreasonable or otherwise unlawful. A reduction in the rates on gasoline will decrease the present abnormal spread between the gasoline rates and the crude-oil rates. While it may still remain greater

than normal because of the low level of certain of the latter rates, we are not persuaded that the gasoline rates can on that account be found unduly prejudicial to complainants or the crude-oil rates unduly preferential of the Utah Oil Refining Company. The raising of the crude-oil rates would not benefit complainants in any way.

We find, therefore, that the rates assailed are not unjustly discriminatory, unduly prejudicial, or unduly preferential, but that the rates assailed on gasoline, in carloads, are, and for the future will be, unreasonable to the extent that they exceed or may exceed \$1 per 100 pounds from the midcontinent field, 55 cents per 100 pounds from Florence, Colo., 65 cents per 100 pounds from Casper, Wyo., 69 cents per 100 pounds from Greybull, Wyo., 75 cents per 100 pounds from Wilmington, Calif., and points grouped therewith, and 81 cents per 100 pounds from Boaz, Calif., and points grouped therewith. The rates so prescribed take into consideration the general increases authorized by us in *Increased Rates, 1920*, 58 I. C. C., 220.

An appropriate order will be entered.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1410.  
GRAIN AND GRAIN PRODUCTS FROM MEMPHIS, TENN.,  
ORIGINATING BEYOND, DESTINED TO CAROLINA  
TERRITORY.

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*Submitted October 29, 1921. Decided December 30, 1921.*

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Proposed increased carload and less-than-carload rates on grain and grain products from Memphis, Tenn., to Carolina territory, when originating in Arkansas, Oklahoma, Texas, and Louisiana, found justified. Order of suspension vacated and proceeding discontinued.

*H. L. Walker, Edward D. Mohr, and W. L. Nichol* for respondents.  
*J. B. McGinnis* for protestant.

*R. L. Callahan and A. F. Vandegrift* for Louisville Board of Trade; *B. J. Drummond* for Cincinnati Grain & Hay Exchange; *Ray Williams* for Cairo Board of Trade; *Charles Rippin* for Merchants Exchange of St. Louis; and *Charles D. Jones* for Nashville Grain Exchange.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

*AITCHISON, Commissioner:*

By schedules filed to become effective October 1, 1921, respondents proposed a revision of the rates on grain and grain products, in carloads and less than carloads, from all the Ohio and Mississippi river crossings to local and junction points in Carolina territory, and to local and junction points in Atlanta territory (sometimes called Carolina territory south of the Walhalla line) as described in agent F. L. Speiden's I. C. C. No. 501. The revision contemplated both reductions and increases in rates, but as a whole the reductions more than offset the increases. Included in the revision were certain increases in the carload and less-than-carload rates from Memphis, Tenn., to local and junction points in Carolina territory, on grain and grain products originating in Arkansas, Oklahoma, Texas, and Louisiana, hereinafter referred to as the southwest. Upon protest of the Memphis Merchants Exchange these rates were suspended until January 29, 1922, but the remainder of the schedule became effective October 1, 1921. The Nashville Grain Exchange also appeared in opposition to the changes proposed, while the Merchants Exchange of St. Louis, the Cairo Board of Trade, the Louisville

66 I. C. C.



Board of Trade, and the Cincinnati Grain & Hay Exchange appeared in support of the proposed rates.

The level of the rates on the respective commodities involved varies somewhat, depending upon the commodity description, but a fixed relationship is observed. For the purposes of this report we need only consider rates applying in carloads, on "Grain and Grain Products, rated class D in Southern Classification."

When the rates from the river crossings to points in Carolina territory were originally established little surplus grain was produced in the southwest. Respondents considered only the movement from the northwest, which, including Illinois, was and is the center of the grain production in the United States. As the distances from the primary grain markets on the Missouri River to the Carolina territory are substantially the same by way of all the Ohio and Mississippi river crossings, from Memphis to Cincinnati, inclusive, the rates, by adjustment of the factors south and east of the crossings, are, and for many years have been, equalized through the various gateways. Thus there has resulted the observance of a differential in the rates from Memphis under the Louisville-Cincinnati rates. Disturbances in this adjustment, occasioned by the increases under general order No. 28 of the Director General of Railroads, were accentuated by the later increases authorized by us on July 29, 1920, but we directed the carriers promptly to restore the former equalization. The object of the revision was to accomplish that purpose as to traffic originating in this northwest or equalization territory. With minor exceptions, unnecessary here to be mentioned, the through rates from points in that territory to the Carolinas are, in so far as is disclosed by the record, the same via all gateways.

Respondents decided to correct simultaneously with the revision from the northwest what they regarded as an unjustifiable situation which existed so far as concerned the rates from Memphis to points in Carolina territory, on traffic from the southwest. The rates from Memphis to the Carolinas applicable on grain and grain products from equalization territory have for some years applied also on the traffic when originating in the southwest.<sup>1</sup> The aggregate production of grain in Texas and Oklahoma in 1920 represents an increase of almost 200 per cent over the aggregate production of those states in 1911. Respondents maintain that there is no necessity for equalizing the rates on grain from the southwest as between Memphis

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<sup>1</sup> A distinction was observed in the tariffs as between the rates from Memphis to North Carolina and South Carolina. To points in South Carolina, the equalization rate applied "from Memphis, Tenn., both proper and from beyond," while to points in North Carolina it was published as a proportional rate on traffic originating "beyond Memphis," and a flat rate, which was higher, applied from Memphis "proper."

and the gateways north thereof, since the combination on Memphis will always be less. They also maintain that the equalization rate is not the proper measure to be applied on traffic from the southwest. They therefore published two Memphis rates: one, a proportional rate, to apply on traffic from equalization territory; and the other, a local and proportional rate, to apply on traffic from Memphis proper and from the southwest. As now published the equalization rates also apply from Memphis on traffic originating east of that point, but respondents say that in the revision it was intended to restrict their application to traffic from equalization territory, and that the tariffs will be amended accordingly. The table below shows the changes under the revision in the rates from the crossings, Memphis and north, to Charlotte, N. C., a representative destination point, applicable on traffic from equalization territory. Rates hereinafter referred to will be stated in cents per 100 pounds.

From—	In effect Sept. 30, 1921.	Effective Oct. 1, 1921.
St. Louis.....	39.5 cents.	51 cents.
Cincinnati-Louisville.....	44 cents.	44 cents.
Evansville-Cairo.....	46.5 cents.	47.5 cents.
Memphis.....	41.5 cents.	41 cents.

Some reductions and some increases resulted. The rate from Memphis was reduced 0.5 cent, and the present differential, Memphis under the Louisville-Cincinnati group rate, is 3 cents. The rates stated as effective October 1, 1921, also apply through the respective gateways on traffic from the southwest, with the exception of Memphis. The rate now applicable from Memphis both on traffic originating at that point and on proportional traffic from the southwest is 41.5 cents; and respondents propose 47.5 cents, the same rate as is now applied through the Evansville-Cairo gateways.

The following tables, reproduced from respondents' exhibits, show the present and proposed rates through Memphis to Charlotte from Oklahoma City and Fort Worth, representative points of origin in Oklahoma and Texas, respectively, compared with rates through the other crossings and with the rates from Memphis applicable on traffic from equalization territory:

From Oklahoma City—			From Oklahoma City—		
	Distance.	Rate.		Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>
To Memphis.....	437	36.5	To Louisville.....	816	48
Beyond (proposed) <sup>1</sup> .....	686	47.5	Beyond.....	543	44
Aggregate (proposed).....	1,173	84	Aggregate.....	1,359	92
To East St. Louis.....	545	41	To Cincinnati.....	881	48
Beyond.....	848	51	Beyond.....	558	44
Aggregate.....	1,393	92	Aggregate.....	1,439	92
To Evansville.....	708	44.5	To Cairo.....	694	41
Beyond.....	685	47.5	Beyond.....	738	47.5
Aggregate.....	1,393	92	Aggregate.....	1,432	88.5

<sup>1</sup> Present rate, 41.5 cents; equalization rate, 41 cents.

<sup>2</sup> St. Louis combination.

From Fort Worth—	Rate.	From Fort Worth—	Rate.
	<i>Cents.</i>		<i>Cents.</i>
To Memphis.....	42	To Vicksburg.....	42
Beyond (proposed) <sup>1</sup> .....	47.5	Beyond.....	47.5
Aggregate (proposed).....	89.5	Aggregate.....	89.5
To New Orleans.....	42	To Evansville.....	53.5
Beyond.....	47.5	Beyond.....	47.5
Aggregate.....	89.5	Aggregate.....	101
To St. Louis.....	50	To Louisville.....	53.5
Beyond.....	51	Beyond.....	44
Aggregate.....	101	Aggregate.....	97.5
To Cairo.....	50		
Beyond.....	47.5		
Aggregate.....	97.5		

<sup>1</sup> Present rate, 41.5 cents; equalization rate, 41 cents.

The present rate from Memphis, on traffic originating in equalization territory, is 3 cents under the Louisville-Cincinnati group rate, and by reason of our suspension order the equalization rate in effect from Memphis prior to October 1, 1921, is now applicable on traffic originating in the southwest. The proposed rate from Memphis on such traffic is 3.5 cents higher than the Louisville-Cincinnati group rate, or 6.5 cents higher than the present rate from Memphis on grain from equalization territory. It may also be noted that the proposed rate is 6 cents higher than the rate which is now effective by reason of the suspension order. The rates on classes and commodities generally to points in Carolina territory are higher from Memphis than from Louisville and Cincinnati, the distance from Memphis being greater than from those crossings.

In justification of the rates proposed, respondents rely largely upon comparisons of these rates with the rates on the same commodities from various other gateways to the same destinations. For illustration, they show the following rates and distances:

To Charlotte from—	Distance.	Rate.
Cincinnati.....	555 miles.	44 cents.
Louisville.....	541 miles.	44 cents.
Evansville-Cairo.....	688 miles (aver).	47.5 cents.
Memphis.....	686 miles.	47.5 cents.

The rates under consideration apply to 135 junction points in the Carolinas. To these points the average of the short-line distances from the respective crossings is 597 miles from Cincinnati, 602 miles from Louisville, 728 miles from Evansville, 789 miles from Cairo, and 735 miles from Memphis; or an average from Memphis of only 24 miles under the average from the Evansville-Cairo group. The present rate of 41.5 cents applicable from Memphis on southwestern grain is 6 cents lower than the Evansville-Cairo rate, and in view of the substantially equal mileage, respondents assert that there is no justification for a difference in those rates.

There are 49 junction points in the Carolinas, to which the rate proposed from Memphis is 47.5 cents. The short-line distance via workable routes from Memphis to such points varies from 538 to 925 miles. Respondents contrast these rates with the rates from the northern crossings to numerous points in Georgia, Alabama, and Florida, which, with few exceptions, are the same as or higher than the rates proposed, although the distances shown from the northern crossings to the southeastern points vary from 382 to 751 miles. The rates now applicable from New Orleans to points in the Carolinas and the southeast, distance considered, are also on a somewhat higher basis than the rates here proposed.

On traffic from Fort Worth to Charlotte, a rate of 47.5 cents is proposed from all crossings Memphis and south. Moreover, the through rates via all such crossings are the same. Respondents contend that equalization of rates on Arkansas and Oklahoma grain is unnecessary, as the lowest combination makes on, and the traffic moves through, Memphis, but that the equalization on Texas grain should be through the lower Mississippi River crossings. The rates from Texas to those crossings are generally the same. In the revision the proportional rates from Vicksburg and Natchez, Miss., and New Orleans are made the same as the local rate from Memphis. If the suspended rates become effective, the through rates by way of Memphis from the southwest territory will be as low as or lower than by way of any crossing, and lower than by way of any crossing north of Memphis. Respondents contend that if the equalization on southwestern grain is to be continued and the proposed rates do not become effective, a reduction in the existing rates from the lower crossings will be imperative. The relative adjustment by way of Memphis and the southern crossings prior to the revision is not fully disclosed, though with certain exceptions it appears that the aggregate rates were the same from Fort Worth to Charlotte.

Parties appearing in support of the proposed schedules point out that prior to the publication of the tariff in question the various differentials now proposed were considered in conferences between their representatives and the Memphis protestant and agreed to by all such interests except such protestant. The claim is made that Memphis frequently undersells certain of these gateways in the Carolinas. The industries which suffered from such competition were unadvised as to the origin of the grain, but argue that the effect of applying the equalization rate from Memphis on all traffic is to displace grain shipments from equalization territory with grain from the southwest. They contend that they have had little opportunity to compete in the Carolinas on southwestern grain, that their disadvantage should not be unduly increased, and that if it is proper to apply

a rate 3.5 cents higher than the Louisville-Cincinnati rate from Cairo on southwestern grain, the same rate should be applied from Memphis. Representatives of the crossings other than Memphis emphasize the materially longer haul from Memphis than from the northern crossings, and maintain that Memphis is entitled to the equalization rate only from equalization territory. They object to the application of that rate from any other territory. Representatives of Cairo state that, if the equalization rate is to be continued in effect from Memphis on grain from the southwest, they will ask for the same rate. Louisville and Cincinnati claim that Memphis is seeking to retain the equalization rate on traffic originating in territory tributary thereto, although grain from these northern gateways, when originating in Indiana, Ohio, and territory tributary to such gateways, is charged a basis higher than the equalization basis to the same destinations. If the equalization basis from Memphis is to be continued, these gateways will request a readjustment of the rates from such points on grain originating in tributary territory.

There is no substantial production of grain in Arkansas and Louisiana. The record fails to indicate any substantial movement of grain or grain products except red "rust-proof" oats and kaffir corn, milo maize, and alfalfa meal, from the southwest territory to the Carolinas. Of the commodities named, oats from Texas and Oklahoma move in considerable volume. This variety of oats is purchased extensively in the Carolinas for seeding and commands a price materially higher than white oats. The movement of the other commodities, beyond Memphis, is largely in the form of mixed feed. Transit regulations at the gateways or other intermediate points permit the storage, mixing, and rehandling of the various inbound products. A number of grain and mixed-feed dealers and also manufacturers of mixed feed are located in Memphis, and the objection to the proposed schedules comes principally from these dealers and manufacturers. Many of the southwestern farmers sell their red oats and purchase white oats for feeding, and the grain dealers at Memphis are apprehensive that the proposed rates may check future grain traffic from the southwest to the Carolinas.

The Memphis protestant contends that it is to the interest of the principal respondents participating in the movement of grain to the Carolinas to handle the traffic from Louisville rather than from Memphis, due to the location of numerous elevators on their rails at that northern crossing and that the effort is here made "to run Memphis out of the Carolina territory." However, respondents' evidence that the proposed rates would still afford aggregate rates lower than through the northern crossings is unchallenged, unless possibly with respect to rates from local points on the Atchison, Topeka & Santa

Fe, from which joint inbound rates are maintained to St. Louis, which are on a lower basis than the combination inbound rates which apply to Memphis. The record does not afford a comparison of the relative aggregate rates, but it is conceded that no grain or grain products now move from such points to Memphis.

The subjoined table compares the aggregate rates to Charlotte and to Columbia, S. C., now applicable from Omaha, Nebr., and those which would result from Oklahoma City and Fort Worth, respectively, should the suspended schedules become effective:

	Short-line distance.	Aggregate rate.
Omaha to Charlotte.....	1,164 miles.	66.5 cents.
Oklahoma City to Charlotte.....	1,173 miles.	84 cents.
Omaha to Columbia.....	1,227 miles.	66.5 cents.
Fort Worth to Columbia.....	1,086 miles.	89.5 cents.

However, this proceeding primarily involves the relationship of the different crossings on grain from the southwest. The aggregate through rates from the southwest through Memphis to the Carolinas are not here before us. If such rates, based upon the proposed factors east of Memphis, would be excessive, it does not follow that the cause must of necessity be such factors.

Upon this record we find that respondents have justified the proposed rates, and an order will be entered vacating the order of suspension and discontinuing this proceeding. Certain other proceedings now pending before us assail the present aggregate rates on grain from Texas, through the lower crossings to the southeast, and at least to an extent to Carolina territory, and also involve the level of the present rates from the various crossings to those destinations. Our finding in this proceeding is without prejudice to the conclusion which the record in such proceedings may indicate to be proper. The reductions required by our order of November 21, 1921, in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, are, of course, not superseded by these findings or by the order of vacation to be entered herein.

No. 11423.<sup>1</sup>

BEDFORD CUT STONE COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY COMPANY, ET AL.

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*Submitted October 24, 1921. Decided December 30, 1921.*

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1. Charges assessed, during federal control, on stone, in carloads, from points on the lines of the Chicago, Indianapolis & Louisville and the Chicago, Terre Haute & Southeastern railways in the Indiana limestone district to various destinations, found unreasonable to the extent that the charges collected for the preliminary services from quarries to mills and similar movements exceeded those herein found reasonable during such period. Reparation awarded.
2. Present through charges applicable to interstate movements not found unreasonable or otherwise unlawful.

*Walter E. McCornack, W. E. Clark, C. G. Creighton, and H. H. Bieze* for complainants.

*John F. Finerty and Royal McKenna* for Director General of Railroads.

*William F. Peter* for Chicago, Terre Haute & Southeastern Railway Company and Illinois Central Railroad Company.

*C. C. Hine* for Chicago, Indianapolis & Louisville Railway Company.

#### REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

LEWIS, *Commissioner*:

Exceptions were filed by the complainants to the report proposed by the examiner and the cases were orally argued. We have reached conclusions which differ in certain respects from those recommended by him.

These two cases were consolidated for hearing and will be disposed of in one report. Complainants, corporations engaged in the stone business, with quarries or mills in the Indiana limestone district, allege that defendants' charges for certain so-called preliminary carload movements of stone within that district before shipment to final destinations, and the through charges of which they

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<sup>1</sup> This report also embraces No. 11335, Ingalls Stone Company v. Director General, as Agent, Chicago, Indianapolis & Louisville Railway Company, et al.

are components, were and are unreasonable and, as to one of the preliminary movements, unduly prejudicial. The prayer, as amended subsequent to the hearing, is for reparation on shipments moving during the period of federal control subsequent to June 24, 1918, and the establishment of reasonable and nonprejudicial rates and charges for the future.

The deposits of the Indiana limestone district lie wholly within that state and extend north and south from Gosport to Salem, approximately 75 miles along the Chicago, Indianapolis & Louisville Railway, hereinafter called the Monon, and east and west a distance of 15 miles along the Chicago, Terre Haute & Southeastern Railway, hereinafter called the Southeastern. The lines of these carriers intersect at Bedford, which is approximately in the center of the district. The district is also served by the Illinois Central and the Baltimore & Ohio Southwestern railroads. At present the operations are confined to the territory extending from Bedford north to Stinesville, 38 miles.

The quarries, with few exceptions, are not located on the carriers' main lines, but at points reached by spurs owned by the carriers. The preliminary movements are single-line or two-line hauls by the Monon and the Southeastern. The term intraplant, as herein used, refers to movements within the same quarry, and the term intradistrict to movements within the district but not within the same plant. While the complaints set forth 15 different preliminary movements, they may be summarized as follows:

No. 1: From quarry to a mill (intradistrict). The average haul of the shipments under this move is shown as 6.5 miles.

No. 2: From quarry to stacking pile or mill within the same quarry (intraplant). The distances are said to range from a few hundred feet to 0.5 mile.

Nos. 3, 3(a), 3(b), and 3(c): Movements of waste stone or by-product resulting from the quarrying, scabbling, or milling of the stone. These movements are said to range from a few hundred feet to several miles and may be either intraplant or intradistrict.

Nos. 4, 4(a), and 4(b): From mill to mill. This involves a movement of stone from one mill to another for further treatment. The hauls are from 1 to several miles.

Effective June 25, 1918, the charges for these respective preliminary services were increased under general order No. 28 of the Director General of Railroads in various amounts; in the majority of cases, 2 cents per 100 pounds. General order No. 28 also established charges for certain services for which none existed prior to June 25, 1918. On September 21, 1918, and at subsequent dates during federal control these charges were reduced. Complainants ask



reparation on numerous shipments made during the period the higher charges were in effect on the basis of the lower charges subsequently established.

The following table shows the charges for the different movements in effect prior to June 25, 1918; those which became effective on that date; and the charges established on September 21 and at subsequent dates during federal control:

Moves.	Charges prior to June 25, 1918.	Charges June 25, 1918.	Charges in effect Sept. 21, 1918.
Nos. 1 and 2 when between points on Southeastern.	Nothing.....	2 cents per 100 pounds....	\$5 per car (Intradistrict); \$2.50 per car (Intraplant).
Nos. 1 and 2 when between points on the Monon.	\$2 per car (Intradistrict); 50 cents to \$1 per car (Intraplant).	\$2 per car plus 2 cents per 100 pounds (Intradistrict); 50 cents to \$1 per car plus 2 cents per 100 pounds (Intraplant).	\$5 per car (Intradistrict); \$2.50 per car (Intraplant).
No. 1 when between point on Monon and point on Southeastern, or vice versa.	\$4 per car.....	\$4 per car plus 2 cents per 100 pounds to point on Southeastern, and \$4 per car plus 4 cents per 100 pounds when to point on Monon.	\$5 per car. <sup>1</sup>
No. 3 when from quarry or conveyor on Monon to lime kiln on Monon (Intraplant).	Nothing.....	20 cents per ton.....	\$2.50 per car. <sup>2</sup>
No. 3(a) when from mills on Southeastern at Oolitic, Ind., to crusher of Stone Products Co. at same point.	\$1 per car.....	\$1 per car plus 1 cent per 100 pounds.	\$2.50 per car. <sup>2</sup>
No. 3(b) from Bedford on Southeastern to Oolitic, Ind., on Southeastern, and vice versa.	18 cents per ton...	38 cents per ton.....	\$5 per car. <sup>2</sup>
No. 3(c) from Bedford on Southeastern to Bedford on Southeastern.	\$4 per car.....	\$4 per car plus 1 cent per 100 pounds.	\$5 per car. <sup>2</sup>
No. 4 from mill on Monon to mill on Monon.	\$5 per car.....	\$5 per car plus 2 cents per 100 pounds.	Odds and ends 4 cents per 100 pounds; <sup>4</sup> sawed stone 4.5 cents to 9 cents per 100 pounds, according to station location. <sup>4</sup>
No. 4(a) from mill on Monon at Bedford to mill on Southeastern at Bedford.	\$4 per car.....	\$4 per car plus 2 cents per 100 pounds.	To Bedford 8 cents per net ton plus \$3 car rental; beyond, \$2 per car of 50,000 pounds or less, plus 8 cents per net ton or fraction thereof on excess of 50,000 pounds.
No. 4(b) from mill on Southeastern at Bedford to mill on Southeastern at Bedford.	\$4 per car.....	\$4 per car plus 2 cents per 100 pounds.	\$5 per car of 50,000 pounds or less, plus 10 cents per net ton or fraction thereof on excess of 50,000 pounds.

<sup>1</sup> Effective to points on Monon October 7, 1918.

<sup>2</sup> Effective January 27, 1919.

<sup>3</sup> Effective December 2, 1918.

<sup>4</sup> Increase. Effective January 26, 1919, odds and ends 4.5 cents per 100 pounds.

The charges shown effective September 21, 1918, and at subsequent dates during federal control continued in effect until August 26, 1920, when they were increased in amounts authorized by us and with few exceptions these are the charges now in effect. For example, where the charges were \$2.50 and \$5 per car on September 21, 1918, and at subsequent dates during federal control, they are now \$3.50 and \$7 per car, respectively.

The most important move, which embraced the majority of the shipments, is No. 1. The charges shown for this move apply only on shipments subsequently receiving a line-haul movement out of the district, and effective May 5, 1918, this restriction was also made applicable to the charges under move No. 2. With respect to the other moves, the charges were and are unrestricted in their application. As stated, complainants ask reparation on the basis of the charges subsequently established during federal control. They admit the reasonableness of the subsequently established, as well as the present, charges for the preliminary services when independently considered, but on the theory that the outbound rates, which were also increased 2 cents per 100 pounds on June 25, 1918, carry a sum of approximately 3 cents per 100 pounds as special compensation to the initial carrier for the preliminary services, they request that for the future the charges for such services be reduced to mere nominal amounts. Their contention is that they are now paying twice for the preliminary services. In support of their contention they cite, among other things, *Oakley & Son v. C., T. H. & S. E. Ry. Co.*, 44 I. C. C., 488, wherein, at page 490, we said:

At the inception of the stone business in the Bedford district the quarries were served by independent short lines of railroad which charged 3 cents for their service prior to delivery of the shipments to the line-haul carriers. Subsequently these independent lines were absorbed by the line-haul carriers and the rates which were formerly received by the independent lines were added to the through rates. The same basis was observed in connection with shipments moving over spurs subsequently constructed by the line-haul carriers.

We also said at page 489:

The quarries are not located on the carriers' main lines, but are at points reached by spurs owned by the carriers, some of which are 8 miles long. The stone is loaded on cars at the quarries and is switched to mills in the Bedford district where it is rough sawed or scabbled. The carriers charge \$2 per car for this switching service. The stone is then reloaded and switched to the billing station, where its transportation out of the Bedford district begins. It was stated by defendants that this service in the Bedford district involved on an average 10 miles of transportation, and that frequently back hauls were necessary.

In further support of their contention, complainants exhibit rates to show that the stone rates from Bedford are on a higher basis, both actually and relatively, than rates from producing points in Ohio, Minnesota, Kentucky, Alabama, Missouri, and Arkansas, to the same destinations, and that particularly to points in eastern trunk line territory defendants' rates were, prior to June 25, 1918, 3 cents per 100 pounds higher than sixth class, which was usually the basis for rates from other producing points.

Quarrying operations in the district commenced in 1877 or 1878 and gradually evolved into the present extensive industry. The original quarries, from 4 to 6 miles from Bedford, were served by

independent transportation lines, some of them narrow gauge, which received 3 cents per 100 pounds for the hauls to their connections with the trunk lines at Bedford; and at that time the stone in rough blocks moved directly from the quarry ledges through to final destinations, sixth-class rates applying outbound from Bedford. In the course of time the trunk lines acquired the short lines and continued the same basis of through rates, namely, 3 cents plus the sixth-class rates, published as commodity rates. The latter rates severally embrace all points in the district, including Bedford proper, as a group, and the inbound component is deducted by the Monon and the Southeastern before prorating the through rates with their connections. To the only mill apparently in existence in the district at the time the short lines were absorbed, stone was transported by those lines at a rate of 3 cents per 100 pounds, plus 2 cents per 100 pounds for transferring shipments from narrow-gauge to standard-gauge cars. But with the development of the industry, the opening of additional quarries and mills, which at present number 32 quarries and 58 mills, and the construction of new spurs by the carriers, the preliminary services became more and more complex, and to meet the increased cost thereof the carriers many years ago established charges therefor which, as modified from time to time as shown, are still in effect. Defendants assert that complainants in attempting to prove their contention confused two entirely distinct services. In other words, defendants state that, at present as in the past, on shipments moving directly from quarry ledge to final destination charges were and are assessed at the outbound rates and nothing more; that this service does not include any of the so-called preliminary services for which the charges here in question are made; and that complainants have failed to show that the outbound rates do now or ever did cover such services. They state that in the *Oakley Case, supra*, the reasonableness of the outbound commodity rates in effect from Bedford to Toronto and Hamilton, Canada, on rough stone, the kind that moves from quarry direct to destination, were assailed to the extent they exceeded sixth class, and argue that the Commission in dismissing the complaint in that case recognized the two kinds of services performed by the carriers in the district as shown by the quotations above cited.

We deem it unnecessary to further discuss the various contentions of the parties upon this phase of the case. The question for determination is the reasonableness of the present aggregate or through interstate charges, and it is our view that this record does not afford a basis upon which we could predicate a finding that such charges in the aggregate are unreasonable.

Considering now the reasonableness of the charges assessed on the shipments during federal control: Complainants assert that the

average loading of the preliminary movements is about 78,000 pounds. At this weight the increase of 2 cents per 100 pounds, effective June 25, 1918, under general order No. 28, was equivalent to an average increase per car of \$15.60. Where the former charge was \$4 per car, this was equivalent to an increase of 390 per cent, and where the former charge was \$2 per car, to an increase of 780 per cent. It is shown that the charge of \$4 per car in effect prior to June 25, 1918, for the movement from a quarry at Coxton on the Southeastern to a mill at Bedford on the Monon was increased on that date 4 cents per 100 pounds, equivalent to \$31.60 per car, or 790 per cent over the former rate. General order No. 28 also had the effect of creating charges ranging from \$7.80 to \$15.60 per car where none formerly existed. Complainants contend that the increases were unreasonable and excessive. It is asserted that the increasing of the charges for the preliminary services as well as the outbound rates by 2 cents per 100 pounds in effect subjected complainants to a double increase in their charges. Complainants construe general order No. 28 as contemplating but one increase in the aggregate charge for the combined service. But by whatever name the preliminary movements be designated or in whatever light they are regarded, and whether or not the aggregate charges were intended to have been increased in more than one factor, the question is as to the reasonableness of defendants' charges for the service performed.

Complainants also argue that the preliminary services within the district are in the nature of switching services and refer to freight rate authority No. 1887, issued by the Director General on October 19, 1918, which authorized reductions in switching charges on various commodities, including stone, which had previously been increased by specific amounts under general order No. 28. This authority limited the increases to 25 per cent over the rates in effect on June 24, 1918, subject to a minimum charge of \$2.50 per car for intraplant switching and \$5 per car for intra or interterminal switching, the same amounts to which complainants' intraplant and intra-district charges were reduced, and recited that the reductions were authorized to relieve the emergency existing at some points by reason of switching charges on the commodities therein named having been increased "out of proportion to the increase made in switching charges on other commodities for service not in connection with line haul."

The carriers have so published their charges for the preliminary services as to make it possible for any mill within the district to secure rough stone from any quarry therein on an equality with every other mill in the district. Complainants desire the continued maintenance of this arrangement.

It was admitted on behalf of the Director General that not all the charges for the short hauls within the district could be justified on the theory of cost of service, but it was argued that any other than a flat advance in the rates from quarry to mill would have resulted in the disruption of the basis of equality of rates between quarry and mill referred to and upon which the stone industry of the district has been built up, and that therefore the reasonableness of these advances should be sustained.

Considering the volume of movement, the nature of the traffic, the length of the hauls, and all the circumstances and conditions surrounding the movements, it appears that charges during the short reparation period on such a different and higher basis from those in effect prior and subsequent thereto were unjust.

We find that the aggregate charges assessed on the shipments in question were unreasonable to the extent that the charges collected for the respective preliminary services exceeded the following charges per car: Move No. 1, \$5; move No. 2, \$2.50; moves Nos. 3 and 3(a), \$2.50 each; moves Nos. 3(b) and 3(c), \$5 each; move No. 4(a), 8 cents per net ton, plus \$3 car rental to Bedford, plus \$2 per car of 50,000 pounds or less, plus 8 cents per net ton or fraction thereof on excess of 50,000 pounds, beyond; and move No. 4(b), \$5 per car of 50,000 pounds or less, plus 10 cents per net ton or fraction thereof on excess of 50,000 pounds; that complainants, namely, Bedford Cut Stone Company, Bedford Steam Stone Works, Chicago & Bloomington Stone Company, Consolidated Stone Company, Furst-Kerber Cut Stone Company, J. Hoadley & Sons Company, Hoosier Cut Stone Company, Indiana Quarries Company, Ingalls Stone Company, Matthews Brothers Company, W. McMillan & Son, National Stone Company, John A. Rowe Cut Stone Company, Shea & Donnelly Company, Incorporated, and Henry Struble Cut Stone Company, made the shipments as described and paid and bore the freight charges thereon; that they have been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice.

With respect to shipments made by other complainants named in No. 11423, there is not such satisfactory proof upon this record that they paid and bore the freight charges thereon as to justify an award of reparation.

We further find that the assailed present through or aggregate charges applicable to interstate traffic are not shown to be unreasonable or otherwise unlawful.

No. 11792.

SWIFT &amp; COMPANY

v.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted April 13, 1921. Decided December 30, 1921.*

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Rates on green salted sheep pelts, in straight carloads, and on green salted hides and green salted sheep pelts, in mixed carloads, from Denver, Colo., to St. Joseph, Mo., and Chicago, Ill., found unreasonable. Reasonable maximum rates prescribed, and reparation awarded.

*R. D. Rynder* for complainant.*A. B. Enoch* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND  
LEWIS.

## BY DIVISION 1:

Exceptions were filed by defendants to the report proposed by the examiner and the case was orally argued.

Complainant, a corporation engaged in the packing-house business, with principal offices at Chicago, Ill., by complaint, filed August 26, 1920, alleges that the rates charged on numerous shipments of green salted pelts, in straight carloads, and of green salted hides and green salted pelts, in mixed carloads, moving since July 1, 1916, from Denver, Colo., to St. Joseph, Mo., and Chicago, were unjust and unreasonable to the extent that they exceeded the rates contemporaneously in effect on green salted hides in straight carloads. We are asked to establish reasonable rates for the future, and to award reparation. Rates herein will be stated in cents per 100 pounds.

Green salted pelts, as the term is here used, are sheep hides with the wool on them, salted for preservation. Small quantities of slinkskins and pelt trimmings were included in some of the shipments, but the rates on these commodities are not attacked.

The shipments comprised 100 carloads, of which 7 moved to St. Joseph and the remainder to Chicago. They moved over the Chicago, Burlington & Quincy direct or in connection with the Chicago

Junction Railway; the Chicago, Rock Island & Pacific; and the Union Pacific and Illinois Central. Charges were collected at the applicable rates hereinafter shown, which were the fifth-class rates or commodity rates equal to fifth class. Contemporaneously lower commodity rates were applicable on green salted hides in straight carloads. Green salted hides and green salted pelts, hereinafter referred to as hides and pelts, respectively, in straight or mixed carloads are rated fifth class in the consolidated classification, in western territory. The following table shows the rates in effect from Denver prior to June 25, 1918, as increased on that date under general order No. 28 of the Director General:

Prior to June 25, 1918:	To St. Joseph.	To Chicago.
Pelts, straight carloads, or hides and pelts in mixed carloads.....	47 cents.	67 cents.
Hides, straight carloads.....	35 cents.	58 cents.
On June 25, 1918:		
Pelts, straight carloads, or hides and pelts in mixed carloads.....	59 cents.	84 cents.
Hides, straight carloads.....	44 cents.	72.5 cents.
On August 26, 1920:		
Pelts, straight carloads, or hides and pelts in mixed carloads.....	79.5 cents.	113.5 cents.
Hides, straight carloads.....	59.5 cents.	98 cents.

Between other points the rates on hides generally apply also on pelts in straight carloads or mixed with hides. Complainant compares the rates assailed and the ton-mile earnings thereunder with rates and earnings on hides and pelts in straight or mixed carloads from and to various points, with rates on packing-house products, and with fifth-class rates. The following table is taken from these exhibits, the rates being those in effect prior to June 25, 1918:

From—	To—	Dis- tance.	Rates. <sup>1</sup>	Ton-mile earnings.	Packing- house products rates.	Fifth- class rates.
		Miles.	Cents.	Mills.	Cents.	Cents.
Denver, Colo. ....	Chicago, Ill. ....	1,034	<sup>2</sup> 67 <sup>3</sup> 58	<sup>2</sup> 12.96 <sup>3</sup> 11.22	67	67
Do. ....	St. Joseph, Mo. ....	604	<sup>2</sup> 47 <sup>3</sup> 35	<sup>2</sup> 15.56 <sup>3</sup> 11.59	47	47
Kansas City, Mo. ....	Chicago, Ill. ....	440	23.5	10.68	23.5	27
Do. ....	Duluth, Minn. ....	667	30	8.86	30	31
Fort Worth, Tex. ....	St. Louis, Mo. ....	722	32.75	9.07	36	75
Dallas, Tex. ....	New Orleans, La. ....	517	26.25	10.15	30	69
Oklahoma City, Okla. ....	Chicago, Ill. ....	782	37	9.46	37	68
Do. ....	Cincinnati, Ohio. ....	881	40.1	9.1	43.3	82.5
Fargo, N. Dak. ....	Chicago, Ill. ....	640	37.4	11.69		42
Chicago, Ill. ....	Beatrice, Nebr. ....	610	29.5	9.67		
Portland, Oreg. ....	Chicago, Ill. ....	2,263	100	8.84		
Omaha, Nebr. ....	Portland, Oreg. ....	1,775	100	11.27		

<sup>1</sup> Rates not specifically marked apply on straight or mixed carloads of hides, pelts, and other articles.

<sup>2</sup> Pelts in straight carloads; hides and pelts in mixed carloads.

<sup>3</sup> Hides in straight carloads.

Complainant also contrasts the ton-mile earnings under the rates assailed with the average ton-mile earnings on all freight of 12 of the principal western carriers, for the year 1917, ranging from 5.20 to 9.06 mills per ton-mile. Defendants urge that the average earnings shown result from the large percentage of coal and other low-grade traffic handled by these carriers.

One of the complainant's exhibits compares the rates of 84 cents on pelts and 72.5 cents on hides in effect between June 25, 1918, and August 26, 1920, from Denver to Chicago, with carload commodity rates on various other articles between the same points. The following rates, taken from this exhibit, apply on commodities rated fifth class in the western classification:

Cereal beverages, carbonated, nonalcoholic.....	65 cents.
Bottles, second-hand .....	52.5 cents.
Fruits and vegetables, canned .....	69 cents.
Zinc white lead.....	50 cents.

Complainant contends that hides and pelts should take lower rates than packing-house products. Packing-house products move in refrigerator cars, require special care because of their perishable nature, and the revenue load is ordinarily not over 36,000 pounds. Hides and pelts move in box cars, are not liable to damage in transit, and load heavily, the shipments covered by this complaint averaging approximately 64,000 pounds per car.

Defendants admit that normally the rates on pelts in straight carloads, or in mixed carloads with hides, should not exceed the rates on hides in straight carloads, but contend that the rates on hides from Denver to St. Joseph and Chicago are unreasonably low. They show that the percentage relationships of fifth class to first class in the rates from Denver to St. Joseph and Chicago are lower than in certain class-rate scales prescribed by us, and argue that if the fifth-class rates were increased so as to bear a proper relationship to the first-class rates they would be considerably higher than the commodity rates here in issue. The record clearly shows that there is no uniform relationship in this territory between the commodity rates on hides and pelts and fifth-class rates.

Defendants compare the ton-mile earnings of 21.6 mills to Chicago and 25.9 mills to St. Joseph under the rates on pelts from Denver in effect since August 26, 1920, with the following ton-mile earnings under the current rates applicable on hides and pelts, in straight or mixed carloads:

Grand Island, Nebr., to Chicago.....	618 miles, 24.8 mills.
Kansas City, Mo., to Albuquerque, N. Mex.....	888 miles, 30.4 mills.
Salt Lake City, Utah, to St. Joseph, Mo.....	1,135 miles, 28.11 mills.
Helena, Mont., to Chicago, Ill.....	1,623 miles, 20.52 mills.



In *Hagenburg v. Belt Ry. Co. of Chicago*, 53 I. C. C., 717, we found rates on mixed carloads of hides and pelts between numerous points in western classification territory to be unreasonable to the extent that they exceeded the rates on hides in straight carloads.

The rates from Denver on hides in straight carloads, using the average weight per car of the shipments herein, viz, 64,000 pounds, would have produced car-mile earnings as follows:

	To St. Joseph.	To Chicago.
Prior to June 25, 1918-----	37 cents	35.8 cents
June 25, 1918, to August 25, 1920-----	46.6 cents	44.8 cents
August 26, 1920-----	63 cents	60.6 cents

We find that the rates assailed were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed the respective rates in cents per 100 pounds shown in the following table, which were the rates contemporaneously in effect from Denver on green salted hides in straight carloads:

	To St. Joseph.	To Chicago.
Prior to June 25, 1918-----	35 cents	58 cents
June 25, 1918, to August 25, 1920, inclusive-----	44 cents	72.5 cents
On and after August 26, 1920-----	59.5 cents	98 cents

We further find that complainant made shipments as described and paid and bore the freight charges thereon at the rates herein found unreasonable; that it has been damaged thereby in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable during the respective periods; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An appropriate order for the future will be entered.

66 I. C. C.

No. 11266.  
STANDARD OIL COMPANY (KENTUCKY)  
v.  
DIRECTOR GENERAL, AS AGENT, ALABAMA &  
VICKSBURG RAILWAY COMPANY, ET AL.

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*Submitted April 18, 1921. Decided December 30, 1921.*

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1. Rates applicable during the period August 1, 1918, to January 28, 1919, on gasoline, refined oils, lubricating oils, and other petroleum products, in carloads, from Wood River and East St. Louis, Ill., Louisville, Ky., Baton Rouge, La., Savannah, Ga., and Jacksonville and Port Tampa, Fla., to points in the states of Kentucky, Mississippi, Alabama, Georgia, and Florida, found not unreasonable.
2. Complainant not shown to have been damaged by reason of any undue prejudice which may have existed. Complaint dismissed.

*J. Joseph Hettinger* for complainant.

*William Burger* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

*McCHORD, Chairman:*

The issues here presented were made the subject of a proposed report by the examiner, to which no exceptions were filed.

Complainant alleges that the rates charged during the period August 1, 1918, to January 28, 1919, on gasoline, refined oils, lubricating oils, and other petroleum products, in carloads, from Wood River and East St. Louis, Ill., Louisville, Ky., Baton Rouge, La., Savannah, Ga., and Jacksonville and Port Tampa, Fla., to points in the states of Kentucky, Mississippi, Alabama, Georgia, and Florida, were unreasonable, unjustly discriminatory, and unduly prejudicial. Complainant asks for reparation only. Rates are stated herein in cents per 100 pounds.

By freight rate authority No. 96, hereinafter referred to as the freight rate authority, issued July 11, 1918, the Director General of Railroads prescribed a uniform increase of 4.5 cents in the rates in effect May 25, 1918, on petroleum and its products, subject to fifth-class rates as maxima, in lieu of the 25 per cent advance established June 25, 1918, pursuant to his general order No. 28.

Within the territory west of the Mississippi River, and from points therein to the southeast, the 4.5-cent increase was given effect

via roads under federal control on or before August 1, 1918. Within and from central freight association territory the readjustment was effected in the rates of federal lines, generally speaking, by August 10, 1918. In the southeast the 25 per cent increase was permitted to remain in effect via all lines until tariffs could be published establishing in the same issues rates reflecting the 4.5-cent increase for both federal and nonfederal roads. For this reason rates upon the basis prescribed in the freight rate authority were not established in the latter territory until various dates between September 8, 1918, and January 28, 1919. In justification of the course pursued in the southeast defendants point out the desirability of avoiding the chaotic rate situation which would have resulted from the application of the 4.5-cent increase via federally controlled lines and the continuance of the percentage advance in joint rates between such lines and lines not controlled.

Complainant does not question the propriety of the 25 per cent increase; nor does it contend that the rates charged on its traffic were intrinsically unreasonable. The prayer for reparation rests upon the ground that during the interim, hereinafter called the reparation period, following the establishment of the 4.5-cent increase via federally controlled roads within western territory, and from that territory to the southeast, and preceding a like adjustment of the rates to southeastern destinations from Wood River and East St. Louis, and between points within the southeast, complainant was damaged by reason of the alleged relatively unreasonable and prejudicial rates applicable on its traffic, compared with the rates accorded shipments of petroleum products moving into the southeast from beyond the Mississippi and Ohio rivers.

Since December, 1918, complainant has operated a refinery at Louisville. Prior to that time it was exclusively a marketing corporation. The bulk of its supply of gasoline and refined oils is purchased at Baton Rouge from the Standard Oil Company of Louisiana; a part is obtained at Wood River from the Standard Oil Company of Indiana; and the balance, with the exception of some lubricating oil from the north and east, is obtained from East St. Louis and from Oklahoma, Louisiana, and Texas refineries. Its marketing operations are confined within the states of Kentucky, Mississippi, Alabama, Georgia, and Florida, in which it maintains, at approximately 535 points, facilities for storing oils in carload quantities. Its shipments move direct from the several sources of supply named to its bulk stations, from which the oils are distributed to the retail trade by tank wagon. Savannah, Jacksonville, and Port Tampa are concentration points to which refined oils are transported by water,

principally from Baton Rouge, and thence reshipped in carload quantities to bulk stations in Georgia and Florida.

With the exception of the state of Kentucky, no petroleum is produced in the southeast, nor are there any refineries or pipe lines in the interior of that territory. Rail hauls generally in that territory are for greater distances, and the rates are correspondingly higher, than are the hauls and rates in the north and east. Prior to June 25, 1918, the average rates on complainant's shipments from Baton Rouge, at which point most of its tonnage originates, was about 35 cents, as compared with an average rate of about 10 cents between points in central freight association territory. Based upon these average rates, the increases under general order No. 28 amounted to 9 cents and 2.5 cents, respectively. The substitution of the 4.5-cent increase for the 25 per cent increase brought about a further advance in the average rate north of the Ohio River, but decreased the advance in the average rate in the south.

The principal competitors of complainant are the Texas Company, with refineries at Port Arthur, Port Neches, and Dallas, Tex., and Tulsa, Okla.; the Gulf Refining Company, with refineries at Port Arthur and Fort Worth, Tex.; and the Indian Refining Company, with a refinery at Lawrenceville, Ill. It meets the competition also of various smaller companies whose plants are located in the mid-continent and Texas fields, and of numerous independent jobbers throughout the southeast who secure their supplies from Oklahoma, Texas, and Louisiana refineries. It appears that no considerable quantity of oil is moved all rail from the western refineries into the southeast; the greater part of the tonnage is handled through pipe lines and by vessels to Mississippi River points and to Gulf and Atlantic ports, from which it is moved by rail to interior points. The competitive traffic so handled during the reparation period was subject, of course, to exactly the same rates for rail transportation that were applied on complainant's shipments. In this connection it should be observed also that on such of its shipments as moved by rail from points west of the Mississippi River complainant received the benefit of rates increased but 4.5 cents. There appears to have been no movement of oils from points north of the Ohio River to southeastern markets during the reparation period, with the exception of a few shipments made by the Indian Refining Company from its Lawrenceville plant to Kentucky destinations. That company maintains facilities for storing carload quantities of oils at 13 Kentucky stations, whereas complainant is prepared to handle tank-car shipments at 34 points in that state. The record indicates that there was no movement of oils from trunk line territory to the southeastern states involved during the period specified herein.

Complainant compared the rates in effect prior to June 25, 1918, as increased on that date, and as modified by the 4.5-cent increase, from the Beaumont-Port Arthur, Tex., group to representative points in Georgia, with the rates contemporaneously in effect from Baton Rouge to the same points. The rates from Baton Rouge were 12 cents less than the rates from the Beaumont-Port Arthur group prior to June 25, 1918. This difference was increased to 15 cents on June 25, 1918, was reduced to a spread of from 3 to 8 cents as a result of the general application of the 4.5 cent increase to the rates from the southwest, but again became 12 cents when the latter increase was applied to the old rates from Baton Rouge. While these comparisons indicate that during the reparation period the rate advantage to Baton Rouge shippers was not as great as that enjoyed by them under the former adjustment, in no instance is it shown that the Baton Rouge rates were less than 2 cents under the rates applicable from Beaumont and Port Arthur. It is argued for complainant that the slight advantage in rates in favor of Baton Rouge was more than offset by the lower production costs in the southwest. Commercial advantages and disadvantages arising from variations in costs of production are not factors that can have any great consideration by us in reaching conclusions as to the propriety of rate structures. *The Illinois Coal Cases*, 32 I. C. C., 659, 673.

Complainant introduced comparative statements showing two series of rates, one increased 25 per cent and the other increased 4.5 cents, to numerous southeastern destinations from Shreveport, La., Oklahoma territory, Chicago, Ill., Whiting, Ind., Rochester and Buffalo, N. Y., Bayonne, N. J., Erie and Franklin, Pa., Parkersburg, W. Va., and Lawrenceville. From the origin points named the substitution of the 4.5-cent increase for the percentage advance had the effect in practically all instances of reducing the rates to southeastern territory. Rates upon the lower basis were established from all of the points named, with the exception of Rochester and Bayonne, on or before August 10, 1918.

When the principal tariff of oil rates in the southeast was amended to reflect the 4.5-cent increase, effective October 29, 1918, that adjustment was extended only to points to which through rates applied. To 80 points taking combination rates from Baton Rouge, on and after that date the factor up to the base point included an increase of 4.5 cents and the factor beyond continued to reflect the 25 per cent advance. Complainant contends that the through rates so constructed were relatively unreasonable and prejudicial and contrary to the intent and purpose of the freight rate authority, which contemplated but one increase of 4.5 cents in rates for continuous through movements. It appears, however, that to only one of

these destinations, where the difference was 0.5 cent, did the through rates so constructed exceed the combination of June 24, 1918, increased 25 per cent. Effective December 26, 1918, via federally controlled lines, and January 28, 1919, via noncontrolled lines, through rates 4.5 cents higher than the combinations of June 24, 1918, were established to the 80 points referred to.

Both prior to June 25, 1918, and during the reparation period joint rates which exceeded the lowest combinations were in effect from Baton Rouge to eight Kentucky and Alabama points shown of record. The New Orleans & Northeastern Railroad and the Alabama & Vicksburg Railway were not parties to the tariffs naming these joint rates, and it appears that complainant's shipments to the points referred to were routed in connection with one of these roads as an intermediate carrier and received the benefit of the combination rates. Complainant's contention that it was damaged by reason of the higher joint rates, therefore, is without foundation.

Complainant's exhibits indicate that there were shipped during the reparation period from the points of origin involved to destinations in Kentucky, Mississippi, Alabama, Georgia, and Florida 3,751 carloads of gasoline and refined oils at rates increased 25 per cent which were higher than the rates subsequently established upon the 4.5-cent basis. Exhibits prepared by complainant at defendants' request show 333 cars which moved short distances at rates in connection with which the 25 per cent increase represented less than 4.5 cents. Had the 4.5-cent increase been in effect the freight charges on these 333 cars would have exceeded by \$2,599.72 the amounts actually collected by the carriers. Out of 1,832 carloads of oils shipped via the Atlantic Coast Line from Port Tampa, Fla., in July, August, and September, 1918, 1,683 cars moved short distances at rates increased 25 per cent which were lower than the rates later established reflecting the 4.5-cent increase; and the charges on 147 out of 415 shipments from Jacksonville during the same months, also would have been higher at rates increased 4.5 cents.

The record contains no evidence that the rates assailed were unreasonable. In fact complainant admits that had the 25 per cent advance remained in effect uniformly throughout the country its complaint would not have been filed. Nor is it shown that complainant has been damaged by reason of any undue prejudice to it and undue preference to its competitors which may have existed subsequent to the establishment of the 4.5-cent increase in rates from points west of the Mississippi River to southeastern destinations and prior to the application of the same increase to rates between points within southeastern territory. The fact that some

competitors may have enjoyed larger profits does not establish damage to complainant. In no instance is it shown that the price was controlled to complainant's detriment by any competitor by virtue of a preferential rate.

We find that the rates assailed were not unreasonable, and that complainant is not shown to have been damaged by reason of any undue prejudice which may have existed. The complaint will be dismissed.

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No. 12129.

NEBRASKA BRIDGE SUPPLY & LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted July 5, 1921. Decided December 23, 1921.*

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Rate on cypress piling shipped in January, February, and March, 1918, from Hargrove Switch and Cardwell, Mo., to Morrilton, Ark., found unreasonable. Reparation awarded.

*H. D. Bergen* for complainant.

*W. B. Knight* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant is a corporation manufacturing and distributing lumber and piling with principal office in Omaha, Nebr. By complaint filed January 24, 1921, it alleges that the charges collected by defendant on three shipments of cypress piling from Hargrove Switch and Cardwell, Mo., to Morrilton, Ark., in January, February, and March, 1918, were unjust and unreasonable. Reparation is asked. Rates will be stated in cents per 100 pounds.

Hargrove Switch and Cardwell are on the St. Louis & Southwestern. Morrilton is on the Missouri Pacific between Little Rock and Van Buren, Ark., about 50 miles west of Little Rock. Two of the shipments were from Hargrove Switch and weighed 74,300 and 48,000 pounds, respectively; the other, from Cardwell, weighed 59,900 pounds. Each shipment was loaded on two cars. Charges of \$364.40

66 I. C. C.

were collected at the applicable combination commodity rate of 20 cents, composed of rates of 5 cents to Paragould, Ark., and 15 cents beyond.

The average distance from the points of origin to Morrilton is about 220 miles. Based on the average weight of the shipments, 60,700 pounds, the rates charged yielded a twin-car revenue of 55 cents per car-mile. Joint commodity rates were in effect from Cardwell to other points. For example, a joint rate of 16 cents applied to Van Buren, Ark., beyond Morrilton on the same line. The fourth section of the act is not involved.

We find that the rates assailed were unreasonable to the extent that they exceeded 16 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$72.88, with interest.

An order awarding reparation will be entered.

68 I. C. C.



No. 11966.<sup>1</sup>

OMAHA PACKING COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted October 19, 1921. Decided December 30, 1921.*

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1. The refusal of the defendants to unload interstate shipments of ordinary live stock from their cars into stock pens adjacent to the packing plants of the complainants, or to make the latter an allowance for unloading such shipments, while, pursuant to section 15 (5) of the interstate commerce act, performing the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge in addition to the line-haul charges, not shown to have violated or to violate the act.
2. The assessment by the defendants of a charge, in addition to the line-haul charges, for unloading and reloading en route interstate shipments of ordinary live stock destined to the private yards adjacent to the packing plants of complainants in No. 11966, while so unloading and reloading such shipments destined to public stockyards, without charge therefor in addition to the line-haul charges, found unduly prejudicial to the complainants and unduly preferential of their competitors whose packing plants are adjacent to public stockyards. Undue prejudice ordered removed.
3. Complaint in No. 12131, complaint in No. 11966 in so far as relating to unloading at destination, and intervening petitions in No. 11966, dismissed.

*R. D. Rynder* for complainants in No. 11966; *A. Z. Baker* and *Thomas H. Jones* for complainant in No. 12131.

*Walter E. McCornack* for so-called interior Iowa packers; *R. D. Rynder* for New England Dressed Meat & Wool Company; *E. W. Skipworth* for Oscar Mayer & Company, Incorporated, and *Henneberry & Company*; *G. Frank Morris* for Kohrs Packing Company; and *H. R. Park* and *C. R. Hillyer* for Chicago Live Stock Exchange; interveners in No. 11966.

*Kenneth F. Burgess*, *T. J. Norton*, *William Burger*, *D. P. Connell*, *George H. Fernald, jr.*, and *Robert H. Widdicombe* for all defendants in No. 11966; and *T. R. Farrell* and *W. A. Hopkins* for Wabash Railway Company.

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<sup>1</sup> This report also embraces No. 12131, *Cleveland Provision Company v. Atchison, Topeka & Santa Fe Railway Company et al.*

*John F. Finerty, Royal T. McKenna, Charles R. Webber, and D. P. Connell* for defendants in No. 12131.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND LEWIS.

McCHORD, *Chairman*:

These cases present one question in common, upon which the respective examiners have reached contrary conclusions, with an additional but closely related question in No. 11966, and will be disposed of in one report. The parties have been heard in oral argument upon the defendants' exceptions to the examiner's proposed report in No. 11966 and upon the complainant's exceptions to the joint proposed report of two examiners in No. 12131.

The several complainants are slaughterers of live stock at various points on the defendants' lines and packers and distributors of the products of such stock.

By the complaints, respectively filed November 20, 1920, and January 24, 1921, it is alleged that the defendants refuse to unload interstate shipments of ordinary live stock from their cars into stock pens adjacent to the complainants' packing plants or to provide or make the complainants an allowance for unloading such shipments, but perform the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge therefor in addition to the line-haul charges, or provide and make an allowance to the owners of the public stockyards for performing that service.

In No. 11966 it is further alleged that the defendants invariably impose additional charges for the service of unloading and reloading en route interstate shipments of ordinary live stock destined to complainants' plants and ultimately unloaded at the adjacent stock pens, while they so unload and reload, without additional charge, such shipments destined to or forwarded from public stockyards when such unloading and reloading en route is not at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations.

By reason of the foregoing practices, it is alleged, the complainants have been and are subjected to charges which in the aggregate were and are unjust and unreasonable, in violation of section 1 of the interstate commerce act, and unduly prejudicial to complainants and unduly preferential of complainants' competitors having packing plants adjacent to public stockyards, in violation of section 3 of the act.

The prayers are that the defendants be severally required to perform the service of unloading the complainants' shipments at the

stock pens adjacent to the plants, without charge in addition to the line-haul charges, or to make complainants reasonable allowances for performing the service, and in No. 11966 to unload and reload such shipments en route without additional charge, except when that service is performed at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations. The complaint in No. 12131 includes a prayer for reparation on past shipments.

At the hearing in No. 11966 petitions in intervention were presented on behalf of the following packing plants: Four in Iowa and one in South Dakota, collectively designated as the interior Iowa packers; the New England Dressed Meat & Wool Company, Somerville, Mass.; Oscar Mayer & Company, Incorporated, Madison, Wis.; Henneberry & Company, Arkansas City, Kans.; and Kohrs Packing Company, Davenport, Iowa. A further petition was presented on behalf of the Chicago Live Stock Exchange, Chicago, Ill. The interveners seek for themselves the relief sought by the complainants, except reparation, and four of them appear to seek the application of that relief to the loading of ordinary live stock at their stock pens for outbound shipment. The several petitions were received of record over the defendants' objection that allowances are thereby sought at points and plants not covered by the complaints, as to which defendants had not had requisite notice or opportunity to prepare their defense. The objection was well taken, and the petitions must be dismissed.

The packing plants of the complainants are widely scattered throughout the country and respectively served by one or more of the defendant carriers. Adjacent to each plant are stock pens, equipped with chutes and other necessary facilities, into which inbound shipments of live stock are unloaded and from which the animals are transferred to the plants for slaughter. These stock pens are adjuncts of the plants, maintained by or for the benefit of the latter, and are neither terminal facilities of the carriers nor otherwise public in any sense. Some of the plants and adjacent pens are located at points at which there are no public stockyards, as the latter term is defined, although it was suggested at the argument that at more or less of them the carriers may have provided unloading facilities not falling within the definition. Several of the plants are in New England, in which region there is but one public stockyard, located at Brighton, Mass., and used as a market for milch cows, not for the handling of beef cattle intended for slaughter. At other points covered by the complaints public stockyards are maintained, adjacent to which are packing plants with which complainants are said to come more or less into competition in the purchase of live

stock and in the sale of the products. A notable instance is Chicago, where the complainant Omaha Packing Company operates a packing plant and adjacent private pens, situate a considerable distance from the public stockyards operated by the Union Stock Yard & Transit Company and adjacent to which are the plants of some of the principal packers of the country. Another is Cleveland, Ohio, where the complainant in No. 12131 operates a plant near the public Cleveland Union Stock Yards, as do certain competitors, and operates another, with adjacent unloading pens, some 3 miles distant. Another situation is that a public stockyard is maintained at East St. Louis, Ill., while at St. Louis, Mo., having no such facility, one of the complainants and another large concern operate packing plants and accessorial unloading pens.

For many years prior to 1917 it had been the general practice of the carriers to assume and pay, out of their line-haul revenues, the charges for loading and unloading ordinary live stock at public stockyards, but not elsewhere. The equipment of the public yards doubtless has made the practice more economical for the carriers than the maintenance of such facilities or the performance of such services themselves. In that year, however, the Union Stock Yard & Transit Company, at Chicago, increased its respective unloading and loading charges from 25 and 50 cents per car to 50 and 75 cents. The transportation lines engaged in the traffic to and from that city refused to absorb the increases, and in *Live Stock Loading and Unloading Charges*, 52 I. C. C., 209, their action was upheld on the ground that it was the duty of the shipper, not of the carrier, to load and unload carload traffic, including live stock. Thereupon, the interstate commerce act was amended by the addition of paragraph (5) to section 15, as follows:

Transportation wholly by railroad of ordinary live stock in carload lots destined to or received at public stockyards shall include all necessary service of unloading and reloading en route, delivery at public stockyards of inbound shipments into suitable pens, and receipt and loading at such yards of outbound shipments, without extra charge therefor to the shipper, consignee or owner, except in cases where the unloading or reloading en route is at the request of the shipper, consignee or owner, or to try an intermediate market, or to comply with quarantine regulations. The Commission may prescribe or approve just and reasonable rules governing each of such excepted services. Nothing in this paragraph shall be construed to affect the duties and liabilities of the carriers now existing by virtue of law respecting the transport other than ordinary live stock, or the duty of performing service as to movements other than those to or from public stockyards.

The case above cited having been reopened, <sup>v</sup>ing respecting the duty of loading and unloading, <sup>v</sup>Chicago stockyards, 58 I. C. C., 164, and in both <sup>v</sup>61 I. C. C.

and held that those yards were the terminals, for the receipt and delivery of live stock, of the line-haul carriers utilizing them.

In giving effect to the statute the carriers have designated in their tariffs certain public stockyards falling within the definition published by the bureau of animal industry, Department of Agriculture, as follows:

Stockyards where trading in live stock is carried on; where yarding, feeding, and watering facilities are provided by the stockyards, transportation, or similar company, and where Federal inspection is maintained for the inspection of live stock for communicable diseases.

The loading and unloading charges appear to have varied somewhat as between the several public stockyards of the country, but in May, 1921, following our approval in *Live Stock Loading and Unloading Charges*, 61 I. C. C., 223, they became uniformly \$1 per car at Chicago and other western points.

The complainants contend that, while the statutory requirement is in terms limited to loading and unloading at public stockyards or en route to or from such stockyards, Congress did not thereby repeal or modify other provisions of the act; and, as conclusive, they point out the here pertinent concluding provision of the amendment, that—

Nothing in this paragraph shall be construed to affect \* \* \* the duty of performing service as to shipments other than those to or from public stockyards.

It is urged that the amendatory provision in no wise impairs section 3 of the act—one of the fundamental parts of the statute—which condemns and prohibits any undue or unreasonable preference of or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, and the subjection of any such entity, locality, or traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. It is insisted that such prejudice and preference as that section prohibits are established by the evidence of competition between the complainants, on the one hand, whose plants are served by their own stock pens and where neither an unloading service nor its equivalent by way of allowance is accorded by the carriers, and whose shipments are not unloaded and reloaded en route under the line-haul rates, and those packing plants, on the other hand, which are fortunate enough to adjoin public stockyards and so are enabled to reap the benefits of the unloading service there provided and of the unloading and reloading service en route.

While a somewhat extended reference is made in one brief to the duty of common carriers by railroad, under section 1 of the act, to

provide facilities and services in connection with the receipt and delivery of property transported, and while public stockyards appear not to be maintained at some of the points here involved or within convenient reach of the complainant plants at points at which they are maintained, no such issue is before us in these cases. The relief sought relates only to the private stock pens, and contemplates the exclusive benefit, of the complainants. Nor are we here called upon to approve or disapprove the definition of public stockyards adopted by the carriers.

As far as the unloading at destination is concerned, we are unable to accede to the contentions thus pressed upon our attention. First, it is inconceivable to us that Congress would resort to a roundabout method of imposing upon the carriers the duty of loading and unloading ordinary live stock at both public and private yards; that is to say, would first single out public stockyards as the beneficiaries of the loading and unloading service under the line-haul rates and then add a provision designed to extend that service to private yards as a "duty" pertaining "to shipments other than those to or from public stockyards." The amendment is definitely limited, both as to initial loading and as to final unloading, to public stockyards. It does not apply to initial loading at other than public stockyards even for shipment to such yards. The concluding provision, as far as pertinent here, is merely that nothing in the amendment "shall be construed to affect \* \* \* the duty of performing service as to shipments other than those to or from public stockyards"; that is, either to enlarge or diminish any such duty as may exist. The positive duty under section 1 goes no farther than to provide such facilities as are reasonably sufficient for the business at particular points, and the establishment of such general facilities is not within the relief here sought.

We are also of opinion that the differentiation of the traffic covered by the amendment does not result in unjust discrimination or undue or unreasonable prejudice or preference; and we have more than once emphasized the distinction between mere discriminations or differences in transportation charges and services and those which are unjust or undue and unreasonable. Indeed, in obeying the amendment to the act the carriers do not load and unload live stock at public stockyards for the benefit of *certain* shippers or consignees; the service is available to *all* shippers or consignees who desire it. Whatever the practical advantages may be, the propinquity of certain packers is merely their good fortune, for which the carriers are not chargeable; and the latter are under no duty to make compensating concessions to competing packers less fortunately situated. There is, in fact, an advantage to the complainants in having their

inbound shipments placed alongside their plants in lieu of public terminal delivery.

In *Covington Stock-Yards Co. v. Keith*, 139 U. S., 128, decided in 1891, a dealer in live stock at Covington, Ky., filed a petition the purpose of which was to compel the carrier concerned to deliver into his private yards, without charge in addition to the line-haul charges, inbound shipments of live stock consigned to him. The carrier had a contract arrangement whereunder the public stock-yards at that point, near petitioner's yards, constituted its exclusive terminal for the receipt and delivery of live stock. The court below ordered and decreed that the carrier should handle the petitioner's shipments through the public stockyards, without additional charge for loading or unloading, or, if unable to do so, should handle his shipments through his own yards on those terms. In affirming the decree, the Supreme Court thus defined the duties of common carriers by railroad concerning the receipt and delivery of live stock:

The railroad company, holding itself out as a carrier of live stock, was under a legal obligation, arising out of the nature of its employment, to provide suitable and necessary means and facilities for receiving live stock offered to it for shipment over its road and connections, as well as for discharging such stock after it reaches the place to which it is consigned. The vital question in respect to such matters is, whether the means and facilities so furnished by the carrier or by some one in its behalf are sufficient for the reasonable accommodation of the public. \* \* \*

When animals are offered to a carrier of live stock to be transported it is its duty to receive them; and that duty can not be efficiently discharged, at least in a town or city, without the aid of yards in which the stock offered for shipments can be received and handled with safety and without inconvenience to the public while being loaded upon the cars in which they are to be transported. So, when live stock reach the place to which they are consigned, it is the duty of the carrier to deliver them to the consignee; and such delivery can not be safely or effectively made except in or through inclosed yards or lots, convenient to the place of unloading. \* \* \*

\* \* \* A carrier of live stock has no more right to make a special charge for merely receiving or merely delivering such stock, in and through stock-yards provided by itself, in order that it may properly receive and load, or unload and deliver, such stock, than a carrier of passengers may make a special charge for the use of its passenger depot by passengers when proceeding to or coming from its trains, \* \* \* [and] it can not invest another corporation or company with authority to impose burdens of that kind upon shippers and consignees. The transportation of live stock begins with their delivery to the carrier to be loaded upon its cars, and ends only after the stock is unloaded and delivered, or offered to be delivered, to the consignee, if to be found, at such place as admits of their being safely taken into possession.

We must not be understood as holding that the railroad company, in this case, was under any legal obligation to furnish, or cause to be furnished, suitable and convenient appliances for receiving and delivering live stock

at every point on its line in the city of Covington where persons engaged in buying, selling or shipping live stock, chose to establish stockyards. In respect to the mere loading and unloading of live stock, it is only required by the nature of its employment to furnish such facilities as are reasonably sufficient for the business at that city.

While the court declared it to be the duty of the carrier to provide for the loading and unloading of live stock, as incidents of transportation, under the line-haul rates, it recognized the Covington stockyards as the terminal of the carrier at that point for that purpose, as did we with respect to the Chicago public stockyards; and the court further held it to be no duty of the carrier to make like provision for that service elsewhere in the same city so long as its own facilities were adequate. We must assume that Congress legislated on the subject with full knowledge of the law as so declared by the court of last resort, and therefore with the knowledge and purpose that public stockyards would be open to all shippers and consignees as the terminals of the carriers for the receipt and delivery of live stock.

The cases at bar are not the first in which we have considered such a question. In *Felin & Co. v. P. & R. Ry. Co.*, 37 I. C. C., 231, wherein the complainant sought a yardage allowance on interstate shipments of hogs upon like grounds and in substantially similar circumstances, we dismissed the complaint. In the course of our report we said:

Complainant argues that Pfund & Sons [local competitors] receive shipments of live stock through the yards of the North Philadelphia Drove Yards at the same through rates as are paid by complainant, without paying unloading charges, but complainant also may use the yards at North Philadelphia.

We find that, as far as unloading at destination is concerned, the practice complained of is not shown to have violated or to violate the act.

With respect to the remaining question, it appears that the unloading and reloading en route is done principally in obedience to the so-called 28-hour law, approved June 29, 1906, 34 Stat., 607, which prohibits the confinement of live stock in interstate transportation in a railway car or other vehicle for a longer period than 28 consecutive hours, with certain exceptions, without unloading into properly equipped pens for rest, water, and food. The amendment here under consideration excepts unloading and reloading en route under the line-haul rates, although the movement is to or from public stockyards, when done at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations.

Counsel for the defendants concede that as to the unloading and reloading en route there is no logical reason for the differentiation,  
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made by the amendment to the act, between the live stock destined to public stockyards and that destined to private yards. They do not contend that the service itself is not included within the term "transportation" in section 1 of the act, and admit that the question here presented differs in a marked degree from terminal unloading. But, on one hand, they urge that the practice assailed, growing out of the amendment, does not amount to an unjust discrimination or an undue preference and prejudice, and, on the other hand, that such a finding of unlawfulness as might conceivably be made in an appropriate case would be without adequate support in the record in this case.

The intermediate unloading and reloading takes place either at yards operated by the carriers or at yards with which they have made arrangements for the performance of the service. Prior to the enactment of the amendatory provision the line-haul rates did not include the service of unloading and reloading en route, and for that service additional charges were uniformly made. Since that time the line-haul rates on ordinary live stock destined to public stockyards have included the service of unloading and reloading en route, but additional charges have been made on such traffic destined to private yards. Otherwise stated, for the transportation or haulage service, apart from the unloading and reloading en route, the carriers had provided rates from and to various points. On traffic to public stockyards those rates have since been reduced by the amount of the charges previously made for unloading and reloading en route, but no corresponding reduction has been made in the rates on traffic to private yards. Thus, higher aggregate charges have been and are applied on shipments destined to private yards, the difference in the charges being dependent, not upon any difference in service, but merely upon whether shipments are destined to public or private yards; and these respectively higher and lower charges are applied to two cars or shipments hauled in the same train, accorded precisely the same service at the same intermediate point, and destined and delivered to two yards, one private and one public, at the same destination point. The distinguishment goes even further, since shipments from public stockyards to complainants' plants would be unloaded and reloaded en route without additional charge, while for the same service accorded shipments from other yards or country stations to the same plants additional charges would be imposed. For this difference in treatment we are advised of and can find no transportation or other sufficient reason.

There is evidence to the effect that each of the complainant plants is in constant competition with packing plants which receive their live-stock shipments through public stockyards and in connection with which no additional charge is made for unloading and reload-

ing en route otherwise than in the instances excepted by the amendment itself.

We are of opinion and find that the assessment by the defendants in No. 11966, or any of them, of a charge, in addition to the line-haul charges, for unloading and reloading en route interstate shipments of ordinary live stock destined to the private stockyards adjacent to the packing plants of the complainants in said case, while so unloading and reloading such shipments destined to public stockyards, without charge therefor in addition to the line-haul charges, is and for the future will be unduly prejudicial to those complainants and unduly preferential of their competitors whose packing plants are adjacent to public stockyards.

We further find that the undue prejudice should be removed by requiring the said defendants to unload and reload en route, without charge therefor in addition to the line-haul charges, interstate shipments of ordinary live stock destined to the private stockyards adjacent to the packing plants of the said complainants, except when such unloading and reloading en route is done at the request of the shipper, consignee, or owner, or to try an intermediate market, or to comply with quarantine regulations, while so unloading and reloading en route, without charge in addition to the line-haul charges, like shipments destined to public stockyards.

An order giving effect to the foregoing findings will be entered.

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No. 10582.  
AMERICAN CREOSOTING COMPANY  
*v.*  
DIRECTOR GENERAL, CENTRAL RAILROAD COMPANY  
OF NEW JERSEY, ET AL.

Decided December 23, 1921.

Finding of undue prejudice and disadvantage in original report, 61 I. C. C., 145, reversed and orders vacated, following the opinion of the Supreme Court of the United States in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921. Complaint dismissed.

SUPPLEMENTAL REPORT OF THE COMMISSION.

*DANIELS, Commissioner:*

In our original report, 61 I. C. C., 145, we found that defendants' participation in tariffs carrying joint rates on lumber and permitting under such rates creosoting in transit at Madison, Ill., Indianapolis, Ind., Bloomington, Ind., Toledo, Ohio, and Simpson, Miss., over routes through Newark, N. J., while contemporaneously denying similar transit arrangements at Newark, subjected complainant to undue prejudice and disadvantage. Accordingly, an order was entered requiring the removal of the undue prejudice and disadvantage found to exist. Defendant carriers, the Central Railroad of New Jersey, and the Pennsylvania Railroad, who serve Newark, and 21 other railroads, brought suit in the United States district court for the district of New Jersey to enjoin the enforcement of our order. The case was heard before three judges on an application for a preliminary injunction. This was denied, and the case was appealed to the Supreme Court of the United States which, in its opinion, *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, said:

Twenty-one of the appellants are powerless either to cause the Central and the Pennsylvania to install the privilege at Newark or to cause the southern and midwestern carriers to discontinue the practice on their lines. The Central and the Pennsylvania are likewise powerless to cause these connecting carriers to withdraw the privilege. They can, it is true, equalize conditions by establishing the privilege at Newark. But to do so would involve departure from a policy to which they have steadfastly adhered and adhesion to which was held by the Commission not to be unreasonable.

\* \* \* \* \*

It is insisted that the order leaves appellants the alternative of withdrawing from the tariffs which establish joint rates with the southern and midwestern carriers through Newark. The order does not so provide in terms; and in fact, the alleged alternative is illusory. The undue prejudice found arises

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not from the existence of joint rates, but from conditions local to other railroads. Cancellation of the joint rates would not change those conditions.

\* \* \* \* \*

But participation merely in joint rates does not make connecting carriers partners. They can be held jointly and severally responsible for unjust discrimination only if each carrier has participated in some way in that which causes the unjust discrimination; as where a lower joint rate is given to one locality than to another similarly situated. *Penn. Refining Co. v. Western N. Y. & P. R. R. Co.*, 208 U. S., 208, 221, 222, 225. Compare *East Tennessee, Virginia & Georgia Ry. Co. v. Interstate Commerce Commission*, 181 U. S., 1, 18.

In view of the opinion of the Supreme Court, our finding of undue prejudice and disadvantage is reversed. An appropriate order will be entered vacating our former orders, and the complaint will be dismissed.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1401.  
ROUTING RESTRICTIONS ON LUMBER FROM HAWLEY  
AND TRUCKEE GROUP POINTS.

*Submitted November 1, 1921. Decided January 9, 1922.*

Proposed increased rates on lumber and forest products, in carloads, from the Hawley and Truckee groups in California and Nevada to interstate destinations east thereof found not justified. Suspended schedules ordered canceled and proceeding discontinued.

*E. W. Camp* for respondents.

*A. Larsson* and *A. S. Titus* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

By schedules in supplement No. 1 to agent Countiss' tariff I. C. C. No. 1092, filed to become effective September 15, 1921, the respondents, the Atchison, Topeka & Santa Fe, Gulf, Colorado & Santa Fe, and Panhandle & Santa Fe, propose to withdraw from participation in joint commodity rates on lumber and forest products, in carloads, from Hawley and Truckee group points in California and Nevada to interstate destinations east thereof on or reached over their lines. By schedules in supplement No. 2 to that tariff, filed to become effective October 15, 1921, respondents propose, in lieu of withdrawing from participation in the joint rates, which would bring about violations of the long-and-short-haul provision of the fourth section of the act, to increase the joint rates from these groups over routes including their lines to the coast group basis. Upon protest of the California White & Sugar Pine Manufacturers Association, the Red River Lumber Company, and the F. S. Murphy Lumber Company, the operation of these schedules was suspended until February 12, 1922. Rates will be stated in amounts per 100 pounds.

Respondents rely principally upon the claim that their divisions of the present rates are not satisfactory. They assert that their revenue from this traffic does not pay out-of-pocket costs; that the proposed schedules would result in increased charges only on shipments to local points on their lines, inasmuch as the Hawley and Truckee group rates would still apply over other routes to common or competitive points and to local points on other lines; that the local points

on their lines to which traffic from these groups moves are comparatively few; and that to Santa Fe points conditions generally do not justify lower rates on lumber and forest products from the Hawley and Truckee groups than from the coast group.

The present Hawley and Truckee group rates are related to the coast group rates as follows: Nine cents less to points in Colorado, 4 cents less to points on respondents' lines or the lines of their connections in Kansas, Oklahoma, and Texas, and to the Missouri River, and 3 cents less to stations east of the Missouri River. The Santa Fe serves the coast group as an originating line, and respondents' divisions of the coast group rates generally yield a higher revenue than their divisions of the Hawley and Truckee group rates.

The rates from these groups are blanketed both as to points of origin and destination. Protestants' main objection to the suspended schedules is that these groups will be disrupted if exceptions to the application of the rates are made by the various lines.

Evidence submitted by protestants indicates that the car-mile earnings under the present rates are reasonably high and that if the suspended schedules become effective a substantial volume of traffic will be affected and the shippers of lumber and forest products from the Hawley and Truckee groups, who are in competition with shippers from southwestern points such as Albuquerque, N. Mex., and Flagstaff and Williams, Ariz., will be seriously handicapped. For example, the rate on box shooks from Albuquerque to Colorado points, for distances ranging from 352 to 528 miles, is 34 cents. The present group-J rate from the Hawley and Truckee groups to the same points is 47.5 cents, and the proposed rate on traffic routed over respondents' lines is 56.5 cents. Protestants state that their products will not move under the latter rate.

Cancellation of the present joint rates can not be justified on the ground that respondents' divisions thereof are unsatisfactory. If satisfactory divisions can not be agreed upon between respondents and their connections, that matter may be presented to us in an appropriate proceeding.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

No. 11962.

WESTERN PETROLEUM REFINERS ASSOCIATION  
v.  
ABERDEEN & ROCKFISH RAILROAD COMPANY ET AL

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*Submitted December 3, 1921. Decided January 9, 1922.*

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Maintenance of track-storage charges on gasoline and other articles requiring "flammable" placards under regulations prescribed by the Commission, when held in tank cars on private tracks where the ownership of the tracks and the cars is the same, found not unreasonable or otherwise unlawful where the private tracks are described as "Railroad Premises" in a rule of defendants' tariffs. Complaint dismissed.

*T. M. Hanrahan, Clifford Thorne, and Fayette B. Dow* for complainant.

*R. W. Barrett* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

DANIELS, *Commissioner*:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued.

Complainant is an association of refiners of petroleum and petroleum products, with plants located principally in the midcontinent oil fields. It attacks as unreasonable, unjustly discriminatory, and unduly prejudicial, track-storage charges on tank-car loads of gasoline and other articles, requiring "flammable" placards, held on private tracks of complainant's members, when the ownership of the tracks and the cars is the same. We are asked to order the cancellation of these charges.

No evidence was presented as to any article of the class described other than gasoline. The charge, which is at present \$2 per car per day, applies after the expiration of 48 hours from the first 7 a. m. following notice of arrival. Rule 6 of the governing tariff, agent Fairbanks' I. C. C. No. 9, provides for the application of the charge when the articles are held in or on "railroad premises." In the definition of this term complainant contends that defendants have illegally assumed control over the private properties of the refineries. The term is defined in the tariff as follows:

The term "Railroad Premises," as used in this rule when applicable to carload shipments, shall embrace all tracks which this railroad provides for its

66 I. C. C.

own uses and purposes; and also private tracks constructed, maintained or operated under a written agreement by which this railroad reserves the right to use the whole or any part of them for itself or others than the party with whom the agreement is executed.

In answer to a questionnaire forwarded by complainant to its members for the purpose of securing information as to the status of the tracks on which their refineries are located, it is shown that of 44 companies, 35 own both the land and tracks, 2 own the land but the railroad owns the tracks, and 7 are located on railroad property; that as to all but 7 of the companies, the railroads have the right under contracts to use the tracks, and that in 10 instances the railroads have taken advantage of this privilege.

In questioning the propriety of the storage charge complainant calls attention to the decision in *In the Matter of Private Cars*, 50 I. C. C., 652, wherein we found that the tariffs should be changed so that private cars standing on the private tracks of owners would not be subject to demurrage charges. The carriers there conceded that private cars should be exempted from demurrage under such circumstances. A similar finding is sought as to the charges here assailed. No objection is made to these charges as applied where demurrage now accrues.

The legality of storage charges under circumstances as described was considered in *Aetna Explosives Co. v. P., C., & St. L. R. R. Co.*, 53 I. C. C., 707. The complainant there attacked as unreasonable storage charges assessed on tank-car loads of acids, benzol, and naphtha, and asked for the establishment of a tariff provision to the effect that private cars on private tracks should not be subject to such charges. The shipments were held in tank cars owned or leased by complainant, and on tracks located partly on the railroad's right of way and partly on land owned or leased by a subsidiary chemical company of complainant. The railroad had the right under contract to use, without cost, the whole or any part of such tracks in connection with other business than that of the chemical company, when the tracks were not occupied by the chemical company, provided such use did not interfere with the handling of business of the latter. Under the tariff governing those shipments the storage charges applied on shipments unloaded in or on railroad premises. We found the charges legally applicable, citing *Pittsburgh, C., C. & St. L. Ry. Co. v. Freedom Oil Works*, 247 Fed., 573, in which a similar state of facts was presented. Thus it appears that the findings in these cases in effect were that the contracts for the use of the private tracks by the railroad constituted the tracks "railroad premises" with respect to the application of storage charges. We distinguished *Dow Chemical Co. v. P. M. R. R. Co.*, 51 I. C. C., 1, in which it was shown that while a part of the tracks upon which the cars were held were



owned by the railroad, they were located on complainant's land, were used exclusively as plant facilities, and the railroad had not reserved the right to use the tracks. We accordingly held in that case that the tracks could in no proper sense be regarded as "premises" of the railroad.

The tariff rule in the instant case, defining railroad premises to embrace private tracks constructed, maintained, or operated under a written agreement by which the carrier reserves the right to use such tracks for itself or others, makes the written agreement the controlling factor rather than the right to use such tracks. While it is not presumed that the carriers would in many instances have the right to use private tracks without a written agreement, it would seem that the substance of the rule is that the carrier has the right to use the tracks, whether evidenced by a written agreement authorizing the use, or not.

It is specifically stated in exceptions filed on behalf of complainant:

We have attacked the charge not on the ground that it should not be assessed under a fair interpretation of the tariff, but on the ground that the tariff itself is unreasonable, unjustly discriminatory and unduly prejudicial.

It appears that refineries in eastern states such as New York and Pennsylvania are generally located very close and sometimes within a few feet of the railroad right of way, and frequently in congested districts close to other buildings. Those in the midcontinent fields are of newer and safer construction and are usually situated several hundred feet from the railroad tracks. A representative of one company testified that its unloading station was about 2,000 feet from the nearest point of the railroad.

Witnesses representing certain refineries, members of complainant association, presented evidence to the effect that loaded cars are inspected immediately upon arrival and unloaded promptly; that extreme precautions are taken in loading and unloading; that the danger from gasoline held in tank cars on private tracks is no greater than when in storage tanks of the refineries; that during the past year there was but one accident at any of the plants belonging to complainant's members; that in view of the care exercised and the facilities available no special hazard is involved; and that the charge is therefore unnecessary and does not operate to expedite the loading or unloading of the cars. The storage charges which have accrued, so far as the record shows, have been negligible; the total charges against one large company with refineries at several points having been only \$68. Complainant calls attention to the fact that the refineries are also generally subject to supervision and regulation on the part of local authorities as to safety conditions.

When casinghead gasoline is held in tank cars vapors are released through vents provided for that purpose, and as it becomes less volatile, interior pressure is removed, and there is less liability of explosion from the gasoline in the cars; from which complainant urges that the length of the time for which the gasoline is held does not add materially to the hazard. An inspector of the bureau of explosives testified that the practice of holding the gasoline in tank cars for the purpose of allowing the vapors to escape, which is termed "weathering," is followed where adequate storage facilities are lacking at refineries. These vapors, if given off in material quantities, form a dangerous and explosive mixture with the air, which, as shown by actual instances, will ignite at distances of several hundred feet from the cars. Thus, while the gasoline in the car may become relatively less dangerous, it is manifest that the chances of accident increase the longer it is held in the car. In addition there is always the danger from leakage, which has been one of the main causes of accidents in the past. Testimony was offered that the railroads have contracts with many if not most of the refineries, whose tracks they use, which to a considerable extent release the railroad from liability to damage resulting from such use.

The claim of undue prejudice is predicated upon the fact that where the railroad has not reserved the right to use the plant tracks no charge is or can be made, but where the railroad has made such reservation the charge is made. In other words, complainant argues that shippers are penalized when they grant to the railroads the convenience of using their private tracks. The record is insufficient to support a specific finding of undue prejudice. It is apparent that if any competitors of complainant's members now enjoy an advantage in this respect, such advantage results not from separate action of the railroads, but from the voluntary action of complainant's members in entering into agreements for the use of their tracks by the railroads. Complainant's contention that shippers are forced by the carriers to sign contracts making private tracks railroad premises is not sustained on this record. No claim of undue prejudice or preference can be sustained under these circumstances.

Statistics of the bureau of explosives offered in evidence show that from 1911 to 1920, inclusive, 27 accidents have occurred during the storage of tank cars containing inflammable liquids on or adjacent to railroad property excluding those resulting from road wrecks, collisions, and derailments. In these 27 accidents 22 persons were killed, 74 injured, and the property loss was \$300,434.

In connection with the present free-time limit and with certain requirements as to notice to consignors the charge here considered was approved for application in central territory in *Storage Charges*

in *C. F. A. Territory*, 28 I. C. C., 372. Defendants state that when the charge was first made effective it resulted in more prompt removal of packages containing dangerous articles from freight stations, and they call attention to the negligible amount of charges which have accrued, as indicating its efficacy in producing a like result as to carload shipments. The reasonableness of the charge as applied to shipments held in private cars on tracks of owners was not in issue in the case last cited, but was before us in *Aetna Explosives Co. v. P., C., C. & St. L. R. R. Co.*, *supra*. Most of the contentions urged in the instant case were considered in that case, but we found that the charge was not unreasonable. The analogy to demurrage charges is not controlling here. The primary purpose of demurrage is to induce the prompt release of equipment, whereas the primary purpose of the storage charge as here applied is to promote safety. The latter charge, so far as the record discloses, has been in no way burdensome to shippers, and is reasonably calculated to bring about the end for which it was established.

We find that the maintenance of the storage charge assailed is not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 4844.  
DOMESTIC BILL OF LADING AND LIVE STOCK CON-  
TRACT.  
IN THE MATTER OF BILLS OF LADING.

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*Decided January 9, 1922.*

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Rules and regulations, heretofore found reasonable in 64 I. C. C., 357, prescribing forms of uniform domestic bill of lading and uniform live stock contract, modified in certain particulars.

Same appearances as in former report.

REPORT OF THE COMMISSION ON PETITION FOR MODIFICATION.

BY THE COMMISSION:

In our former report, *Domestic Bill of Lading and Live Stock Contract*, 64 I. C. C., 357, we made certain reasonable rules and regulations prescribing a uniform domestic bill of lading and a uniform live stock contract, shown as Appendixes D and F, respectively, to the former report. No order was entered. Thereafter the uniform bill of lading committee, representing the railroads in official classification territory, filed with us on December 24, 1921, a petition for modification of our findings in the particulars hereinafter indicated and served copies thereof upon the parties who appeared at the hearings or argument as provided in rule XV of the Rules of Practice. More than 10 days have elapsed since such service and no reply to the petition has been filed by any party.

Under our former report, the first sentence of section 7 of the conditions of the domestic bill of lading is as follows:

Except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid.

The first sentence of section 3 of the uniform live stock contract, found reasonable in our former report, is substantially the same.

The carriers propose to modify the sentences by inserting in each case, at the beginning thereof, the following words:

The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but,

66 I. C. C.

This would make the first sentence of section 7, for example, read:

The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid.

In support of their request for this modification, which, they say, is intended to eliminate doubt as to the liability of the consignee for charges accruing on shipments consigned to him, the carriers give the following reasons:

1. It is well-settled law that a consignee accepting delivery of a shipment becomes liable for the charges lawfully accruing thereon.
2. The carrier could not contract with the consignee to relieve the latter of this liability.
3. The bills of lading heretofore in use have carried the provision that the consignee shall be liable for charges, and its omission might render it difficult for carriers to collect their lawful charges.
4. The provision making the consignee liable for charges was not objected to at the hearings, but was agreed upon by all parties.
5. There is no evidence which would warrant the Commission in striking out the provision in the bills now in use.
6. There is no conflict between the proposed modification and the provision of section 3 of the interstate commerce act.
7. Any impairment of the ability of carriers to collect their lawful charges would result in unjust discrimination, contrary to the interstate commerce act and the Elkins act.

It was not our intention, in making rules and regulations prescribing forms of the uniform domestic bill of lading and the uniform live stock contract, to attempt to relieve consignees from the obligation imposed upon them by law. In view of the question which has been raised, the absence of objection to the modification, and the desirability of removing any opportunity for confusion, we approve and adopt as just and reasonable the proposed modifications.

The carriers also request that the word "Duplicate" before the word "Original" be eliminated from the face of the uniform domestic bill of lading, and that it be inserted before the word "Original" on the face of the uniform live stock contract. A number of reasons are assigned for this request, among them being the statements that the words used in our former report reverse the current practice, would interfere with the negotiability of order bills of lading, and would cause great confusion.

The words "Duplicate Original" on the face of the domestic bill of lading were taken from the form prescribed by us in *Bills of Lading*, 52 I. C. C., 671, Appendix B. Our attention was not called to any objections to them. In view, however, of the petition for

modification and the absence of objection to the desired modification, we approve and adopt as just and reasonable the requested modification in this respect of the uniform domestic bill of lading and the uniform live stock contract.

No order is necessary.

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No. 11233.

CINCINNATI ABATTOIR COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY, ET AL.

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*Submitted November 20, 1920. Decided January 10, 1922.*

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Rate on fresh frozen beef, in carloads, from Columbus, Ohio, to New York, N. Y., found to have been unreasonable. Reparation awarded.

*L. W. Perkins* for complainant.

*Guernsey Orcutt, John F. Finerty, and Royal McKenna* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, POTTER, AND ESCH.

BY DIVISION 2:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant is a corporation engaged in the meat-packing business at Cincinnati, Ohio. By complaint, filed January 19, 1920, it seeks reparation on 10 carloads of fresh frozen beef, 5 of which were shipped during February and 5 during April, 1918, from Columbus, Ohio, to New York, N. Y., alleging that the rate charged was unreasonable, unduly prejudicial, and in violation of section 4 of the act. Rates will be stated in cents per 100 pounds.

The shipments moved over the Pittsburgh, Cincinnati, Chicago & St. Louis and the Pennsylvania. They aggregated 351,436 pounds and charges were collected in the total sum of \$2,432 at the applicable first-class rate of 69.5 cents. Based on this rate the charges applicable amounted to \$2,442.48 and there is therefore an undercharge of \$10.48.

Commodity rates of 39 cents and 45 cents, applied during February and April, 1918, respectively, from London, Ohio, to New York by way of the defendant carriers' lines through Columbus. The tariff naming the latter rates provided in accordance with rule 77 of Tariff Circular 18-A that upon reasonable request therefor rates would be established from intermediate points not exceeding those from more distant points on one day's notice. This was a substantial compliance with the requirements of the fourth section. *Kosse, Shoe & Schleyer Co. v. C., C., C. & St. L. Ry. Co.*, 41 I. C. C., 602. Complainant did not make application for the establishment of a commodity rate from Columbus prior to the time the shipments moved. After the shipments moved, effective June 15, 1918, defendants established a commodity rate of 42.5 cents from Columbus to New York.

Commodity rates of 36.5 cents and 42.5 cents applied from Columbus to New York during the February and April shipment periods, respectively, over the Cleveland, Cincinnati, Chicago & St. Louis and the New York Central. The latter route was embargoed at the time and the route by the lines of defendant carriers was specified in the permit under which the shipments were made.

In the percentage adjustment Columbus takes rates to New York that are 77 per cent of the Chicago-New York rates, and this is the basis of the class rate charged on complainant's shipments and of the subsequently established commodity rate. The claimed rate of 36.5 cents on the February shipments is 77 per cent of the Chicago-New York rate in effect prior to the increase made therein under our supplemental order in *The Fifteen Per Cent Case*, 45 I. C. C., 303.

Following *Morris & Co. v. Director General*, 64 I. C. C., 435, we find that the rate assailed was unreasonable to the extent that it exceeded 36.5 cents on the February shipments and 42.5 cents on the April shipments; that the complainant made the shipments as described and paid and bore the charges thereon at rate herein found to have been unreasonable; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$1,045.77, with interest. Collection of the undercharge may be waived.

66 I. C. C.

No. 11009.

SOUTHERN HARDWOOD TRAFFIC ASSOCIATION ET AL.

v.

DIRECTOR GENERAL, ABILENE & SOUTHERN RAILWAY  
COMPANY, ET AL.

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*Decided December 23, 1921.*

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Finding of undue prejudice and disadvantage in original report, 61 I. C. C., 132, reversed and orders vacated, following the opinion of the Supreme Court of the United States in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921. Complaint dismissed.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DANIELS, *Commissioner*:

In our original report, 61 I. C. C., 132, we found that defendants' participation in tariffs carrying joint rates on lumber and forest products and permitting under such rates transit at certain points while contemporaneously denying similar transit upon the same through routes at Memphis, Tenn., and Louisville, Ky., subjected complainants to undue prejudice and disadvantage. Accordingly, an order was entered requiring the removal of the undue prejudice and disadvantage found to exist. The principles announced in our original report were those adopted in *American Creosoting Co. v. Director General*, 61 I. C. C., 145, originally decided contemporaneously with the instant case. The case cited was appealed to the Supreme Court of the United States and in its opinion, *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, it held that a finding of undue prejudice could not be based upon facts similar to those in the instant case, as is more fully set forth in our supplemental report in *American Creosoting Co. v. Director General*, 66 I. C. C., 54, published concurrently with this report. In view of the opinion of the Supreme Court, we follow the same course here. Our former finding of undue prejudice and disadvantage in the instant case is reversed and an appropriate order will be entered vacating our former orders and dismissing the complaint.

66 I. C. C.



No. 12995.

SOUTHERN HARDWOOD TRAFFIC ASSOCIATION ET AL.

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted October 10, 1921. Decided January 16, 1922.*

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Rates on hardwood lumber and forest products from points in the states of Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, and Kentucky to central territory and other defined territories found unreasonable for the future to the extent shown in the report.

*J. V. Norman and G. F. Graham* for complainants.

*Guernsey Orcutt, A. P. Humburg, Claudian B. Northrop, Charles Webber, Edwin A. Lucas, Edward D. Mohr, M. G. Roberts, H. G. Herbel, A. B. Enoch, and Henry Thurtell* for defendants.

*T. M. Henderson* for Nashville Lumbermen's Club; *George B. Webster* for Associated Cooperage Industries of America; *Arthur Hale* for Elk River Coal & Lumber Company, interveners.

#### REPORT OF THE COMMISSION.

*Cox, Commissioner:*

Complainants are the Southern Hardwood Traffic Association, a voluntary organization of manufacturers and distributors of hardwood lumber and the products thereof, with principal offices at Memphis, Tenn., and various organizations and individual corporations having like interests. Other hardwood interests intervened in support of the complaint, which attacks as unreasonable the rates on hardwood logs, bolts, billets, and other rough material between points in the states of Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio, and as unreasonable, unjustly discriminatory, and unduly prejudicial the rates on hardwood lumber and other hardwood forest products taking lumber rates or arbitraries higher from points in the states named to the Ohio River crossings and to destinations in western trunk line territory, central freight association territory, including Illinois-Wisconsin territory, Buffalo-Pittsburgh territory, eastern trunk line territory, Canada, Virginia cities territory, and Carolina territory. Although Ohio and Indiana are included in the territory

of origin covered by the complaint, the evidence was practically confined to traffic originating south of the Ohio River and our findings will not include rates from points in those states. The general rate level is assailed rather than individual rates, it being alleged that the increases since June 24, 1918, have resulted in transportation charges greater than the traffic can bear, and in undue prejudice to complainants and undue preference of competing shippers in Wisconsin, Michigan, and other northern states because of the widening of the spread in favor of such competing points resulting from percentage increases in rates.

Subsequent to the hearing complainants asked and were granted permission to withdraw from consideration that part of the complaint dealing with the rates on logs. These rates will not, therefore, be considered in this report.

On June 25, 1918, under general order No. 28 of the Director General of Railroads, commodity rates on lumber and forest products were increased 25 per cent, but not exceeding an increase of 5 cents per 100 pounds. On August 26, 1920, following the general increase authorized by us in *Increased Rates, 1920*, 58 I. C. C., 220, the interstate rates on these and other commodities were increased 25 per cent within the southern group as defined in that proceeding, 40 per cent within the eastern group, 35 per cent within the western group, and 33½ per cent between groups.

The specific prayer of the complaint is that the rates in effect August 25, 1920, be prescribed as reasonable and nondiscriminatory rates for the future.

Hardwood production is not confined to a single section. In 1918 the producing states, in the order of their importance, were Arkansas, West Virginia, Michigan, Wisconsin, Tennessee, Louisiana, and Mississippi. Large quantities were also produced in Pennsylvania, Ohio, Indiana, and New York in the north and in Virginia, Kentucky, North Carolina, and Missouri in the south. The total production in the northern states for the year mentioned is shown as 1,947,000,000 feet and in the southern states 3,212,000,000 feet.

Lumber is desirable traffic from a transportation standpoint. It loads heavily, may be transported in any kind of car, moves the year round, and the risk to the carrier from loss or damage is negligible. It constitutes a substantial part of the tonnage of defendants. The statistics showing the relation of lumber tonnage to the total tonnage handled by defendants is not divided as between hardwood and other lumber.

The hardwood industry of the south is in a state of prostration. It was estimated at the time of the hearing in October that 75 per cent of the mills in the southern and Appalachian regions were closed. Many of those still in operation were running on short

time. While there was a considerable falling off during 1921 in the hardwood-lumber movement, it is represented that the loss of traffic in the near future may be still greater. The current movement is due in part to the fact that mills have been getting out logs purchased under contracts heretofore made which call for the cutting of the timber within a specified time. When the first depression came in the lumber market large stocks of both logs and lumber were on hand at the mills and in the yards. These stocks have, to some extent, been moving. But the logging operations, which are conducted in the fall, are being greatly curtailed. A traffic witness for an important Mississippi Valley line stated that while the movement of logs in the autumn on his road is usually heavy, the movement during the past autumn has been light.

The movement of lumber via certain northern lines from points in Wisconsin to Chicago during the first six months of 1921 was approximately 61 per cent of the movement during the first six months of 1920. The movement of lumber from points in Indiana to various destinations in central freight association territory was also less in 1921 than in 1920 for comparable periods. This testimony purports to show that the business depression as it affects the lumber industry has been felt in the north as well as in the south.

Complainants do not seriously contend that the increases in freight rates alone are the cause of the business depression as it affects them. This depression is admittedly the result of lessened demand and rapidly falling prices which were themselves but manifestations of business conditions generally, an aftermath of the war.

During the first six months of 1920 lumber prices reached the highest mark in the history of the industry. The decline since that time is illustrated by the following comparisons of prices of oak lumber f. o. b. mill, per 1,000 feet, submitted by a Louisiana producer:

	July, 1920. July, 1921.	
Firsts and seconds-----	\$175	\$75-\$90
No. 1 common-----	150	30
No. 2 common-----	80	12

The prices of the better grades are still somewhat higher than before the war, but this is not true of the lower grades, and the average log-run price at the mills appears to be approximately at the prewar level.

To meet the changed market conditions complainants have made substantial reductions in their operating costs. Wages, which constitute a large part of these costs, have been reduced 50 per cent in the past year. Production costs generally are now very near the prewar basis, and it is said that no further economies in this direction are practicable. Complainants admit that transportation charges can not be said to have caused their present condition, and this admission

is confirmed by the fact that prices of hardwood lumber at such a destination point as Cincinnati, Ohio, were, generally speaking, materially lower after the freight increases of August 26, 1920, than immediately prior thereto, but they point out that such charges now constitute the only element of cost which has not been reduced.

The plea for the removal of the 1920 increases is based primarily on the effect of these increases on the long-haul traffic. The center of production has gradually shifted southward, first to the southern Appalachian region and latterly to the lower Mississippi Valley, which includes Arkansas, Mississippi, Louisiana, eastern Texas, and eastern Oklahoma, and is the last great reserve of hard woods in this country. On the other hand, the great consuming markets are still in the northern states of Illinois, Indiana, Michigan, Ohio, New York, and Pennsylvania, and a large part of the southern output must be disposed of there, if at all.

Complainants do not contend that the rates from the south have ever been related to those from the north by fixed differentials, but say that the differences actually existing August 25, 1920, were the outgrowth of long experience and represented an adjustment which permitted the movement of the long-haul traffic from the south. General order No. 28, because of its maximum provision, did not disrupt materially this relationship, but the percentage increases of 1920 naturally increased the long-haul rates by greater amounts per unit than the short-haul rates. Representative lumbermen testified that if they were put back on the differences formerly in effect between the north and the south, they could and would resume operation; that the readjustment asked would not necessarily stimulate the consumption of lumber but would enable the southern hardwood dealers to enjoy a greater market in a large part of the consuming territory, and that if the former relationship were restored, "but on a higher level, we will take our chances so far as the rate is concerned."

The changes in relationship which have resulted from the 1920 increases are illustrated by the following table of rates on hardwood lumber in cents per 100 pounds:

From—	To Chicago, Ill.		To Detroit, Mich.		To Buffalo, N. Y.	
	Aug. 25, 1920.	Aug. 26, 1920.	Aug. 25, 1920.	Aug. 26, 1920.	Aug. 25, 1920.	Aug. 26, 1920.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Wausau, Wis.....	12.5	17	25.5	34	29.5	39.5
Memphis, Tenn.....	24.5	32.5	28.5	38	29.5	39.5
Campbellsville, Ky.....	26.5	1 35	26.5	35.5	26	34.5
Salt Lick, Ky.....	23.5	33	19.5	27.5	22	31
Charleston, Miss.....	28.5	38	32.5	43.5	33.5	44.5
Little Rock, Ark.....	29.5	40	33.5	44.5	38	50.5
Brewton, Ala.....	31.5	42	35.5	47.5	38	50.5
Alexandria, La.....	32.5	44	36.5	48.5	41	54.5

<sup>1</sup> In effect Dec. 1, 1920.

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Complainants' principal northern competition comes from the Wisconsin and Michigan mills. Chicago is the largest hardwood consuming point in the country. The August, 1920, increase in the rate from Wausau, Wis., to Chicago was 4.5 cents, as compared with an increase to the same point from Memphis of 8 cents, from Campbellsville of 8.5 cents, from Salt Lick and Charleston of 9.5 cents, from Little Rock and Brewton of 10.5 cents, and from Alexandria of 11.5 cents. Applied to rough seasoned oak lumber the increase from Wausau would amount to \$2.02 per 1,000 feet, or \$24.75 per car of 55,000 pounds, whereas the increases from the southern points range from \$3.60 to \$5.18 per 1,000 feet and from \$44 to \$63.25 per car.

The burden of the rate increases did not, of course, affect equally all grades of lumber. Approximately 50 per cent of the lumber produced from the ordinary run of logs is known as low-grade lumber. While the high and medium grades can still be marketed to a considerable extent, it is claimed that the low-grade lumber, which is now selling at the mill at prewar prices or less, can not under existing business conditions bear the transportation charges to the markets where it was formerly sold. As much of the low-grade lumber can not move except at an actual loss it is accumulating at the mills, where it rapidly deteriorates. Low-grade lumber has never yielded large profits, but its production is a necessary accompaniment of the production of the higher grades, and it must bring something in excess of the transportation charges if the business as a whole is to be successfully carried on.

Defendants oppose the reductions sought primarily because of their own unfavorable financial condition and secondarily because, in their judgment, the rates assailed are not unreasonable and are not responsible for the present plight of complainants. The testimony shows that more hardwood moved from certain points in the south during selected periods of 1921 than moved during corresponding periods in 1920. As previously indicated, however, the increased movement during 1921 may be attributed, at least in part, to the fact that large stocks of lumber were on hand at the beginning of the year and also to unexpired contracts previously entered into.

During the period of eight months ended August 31, 1921, the net railway operating income of class-I railroads for the continental United States yielded a return of 2.64 per cent. In that period the return in the eastern district was 2.35 per cent, in the Pocahontas district 4.36 per cent, and in the southern district 1.58 per cent. For August, 1921, the returns were 5.02 per cent for all class-I railroads, 4.02 per cent for the eastern district, 5.01 per cent for the Pocahontas

district, 6.47 per cent for the western district, and 2.80 per cent for the southern district. For September, 1921, the return for all class-I railroads was 4.28 per cent, a decrease of 0.14 per cent under August, while the return for the southern district was 3.77 per cent, an increase of 0.97 per cent over August. The operating ratio was practically the same in the two months. The above returns are based upon the value of the property used in the service of transportation, as found by us in *Increased Rates, 1920, supra*, with certain adjustments reflecting subsequent additions and betterments.

The statement is made that the increase in recent months in net railway operating income is more apparent than real and has been accomplished to a large extent at the expense of maintenance. However, from carriers' reports on file with us it appears that the expenditure for maintenance in recent months has exceeded the expenditure for maintenance during comparable months in the test period 1914 to 1917. The expenditure for maintenance in September, 1921, was 2.13 times the average for September in the test period. But in this connection we do not overlook the fact that during these periods equal expenditures did not result in equal amounts of work accomplished, due to the increased cost of materials, the higher level of wages, and other causes prevalent during and since the war. It is also apparent from the record that the expenditure for maintenance of certain of the defendants in recent months is below normal.

While the above figures reflect a rather unfavorable financial condition of the defendants for the periods named, this fact does not preclude us from finding particular rates or rates on particular commodities to be unreasonable when the facts are sufficient to justify such a finding.

The present financial condition and business outlook of the southern hardwood industry are far from encouraging. Defendants insist that this condition has resulted largely from stagnation in building and general business depression as well as from the increased use in recent years of cement and other lumber substitutes and is not the result of increased freight rates. On the other hand, as already pointed out, there is considerable testimony to the effect that if the reductions sought are established many of the lumber mills would resume operations. Complainants urge that the situation here is similar to that in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85. Our conclusions herein make extended comment upon this contention unnecessary, but the fact must not be overlooked that the carriers in the western district, which was principally affected by our decision in the *Grain Case*, were earning, as a whole, during a period shortly before our report in that case was issued, a return

somewhat in excess of the return to which they were entitled under the transportation act, 1920, whereas the carriers principally affected in the present case are and have been earning as a whole substantially less than the return to which they are entitled under the law. Nevertheless it does not necessarily follow that the present earnings on hardwood lumber are properly adjusted to the aggregate earnings of the region, or that some readjustment may not be reasonable.

Complainants emphasize the fact that, because of the relatively long haul of hardwood lumber from southern points to consuming points in central and eastern trunk line territory, the percentage increase has had a peculiarly disturbing effect upon their business. We are convinced that there is merit in this point. In *Increased Rates, 1920, supra*, we recognized the probability that the percentage increases therein authorized might require readjustments both in the level of the rates and in their relationship. We there said:

Most of the factors with which we are dealing are constantly changing. It is impossible to forecast with any degree of certainty what the volume of traffic will be. The general price level is changing from month to month and from day to day. It is impracticable at this time to adjust all of the rates on individual commodities. The rates to be established on the basis hereinbefore approved must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary. It is expected that shippers will take these matters up in the first instance with the carriers, and the latter will be expected to deal promptly and effectively therewith, to the end that necessary readjustments may be made in as many instances as practicable without appeal to us.

Following that admonition, complainants sought to induce defendants voluntarily to readjust their rates, and with that object in view several conferences were held. These conferences failed to bring about a result satisfactory to complainants.

The percentage increases, as applied to rates on hardwood lumber from points on defendants' lines to points in western trunk line, central freight, and eastern trunk line territories have to a considerable extent disturbed the relationship of rates between the more distant hardwood producing points of the south and the comparatively near-by producing points of Michigan, Wisconsin, and other northern states. Manifestly this disturbance has been greater at some points than at others and the present record is inadequate for determination of the precise extent to which this disturbance has resulted at all destination points involved. In the basis which we prescribe herein, consideration has been given to the measure of the rates and also to a contraction of the spread between the rates from northern and southern producing points to common markets, with a view to making the spread for the future bear a closer relationship to that which existed prior to August 26, 1920. A revision of rates on hard-

wood lumber from southern points may stimulate the movement from those points to the destination territory described, and thereby increase rather than diminish the net revenue of the southern carriers.

We find that the rates on hardwood lumber here assailed will be for the future unreasonable to the extent that they exceed the rates in effect August 25, 1920, by more than the amounts in cents per 100 pounds shown in the table below. The following table is representative only, and rates from and to other points involved should be revised in harmony with the amounts prescribed below. It should also be understood that in revising the rates, no new fourth section departures or increases in existing fourth section departures are authorized, nor should such findings be construed as justifying or authorizing increases in any rates which are lower than if made on the maximum bases outlined:

From—	To Illinois.	To C. F. A. territory.	To trunk line territory, New England, and Virginia cities.	From—	To Illinois.	To C. F. A. territory.	To trunk line territory, New England, and Virginia cities.
	Cents.	Cents.	Cents.		Cents.	Cents.	Cents.
Missouri.....	6	7	9	Florida.....	9	9	9
Arkansas.....	7	8	10	South Carolina.....	9	9	9
Texas.....	8	9	11	North Carolina.....	9	9	9
Louisiana.....	8	9	11	Virginia.....	9	8	8
Mississippi.....	7	8	10	West Virginia.....	9	7	8
Alabama.....	8	8	10	Tennessee.....	8	8	9
Georgia.....	9	9	9	Kentucky.....	7	7	9

No order will be issued at this time, but carriers will be expected to file and make effective rates in accordance with the findings herein made not later than March 6, 1922, by publication upon not less than 10 days' notice.

McCHORD, *Chairman*:

I concur in the conclusions reached by the majority as far as they go, but think they fall short of substantial justice to the shippers. With the light afforded by the record, I can only attribute to an unreasonable rate level the continued prostration of the hardwood industry in the face of a reversion to practically prewar production costs, prewar selling prices of the lower grades, and not greatly higher prices of the higher grades. Conceding that there may still be some play of other economic factors in the situation, the fact remains that transportation revenues are derived from traffic movements, not from mere rates; and it is manifestly antagonistic to the interests of both carriers and producers to maintain rates at levels that tend to curb, rather than to stimulate, a flow of traffic. To



my mind, the record calls for more substantial reductions, and we should enter an order prescribing them.

I am authorized by COMMISSIONER CAMPBELL to say that he shares in these views.

POTTER, *Commissioner*, concurring:

I concur in the report with respect to reductions of rates to points where such reductions make for a restoration of relationships as they existed prior to August 26, 1920. It is my opinion that the complainants are entitled to such reductions on this ground and without regard to the other considerations mentioned in the report, my thought being that the disproportionate increases, by percentages, of the long-haul rates have, under existing conditions, become unjust and unreasonable and therefore the resulting rates are not just and reasonable. I do not assent to the sufficiency of any other reasons assigned for a reduction, nor do I concur in the reductions to points where such reductions do not make for a restoration of the former relationships.

DANIELS, *Commissioner*, dissenting:

The complaint, as amended, assails as unreasonable and as unduly prejudicial the rates on hardwood lumber from points of origin, generally south of the Ohio and Potomac rivers and from Missouri, Arkansas, Texas, and Louisiana to destinations in western trunk line territory, central freight association territory, including Illinois-Wisconsin territory, Buffalo-Pittsburgh territory, eastern trunk line territory, Virginia cities territory, Carolina territory, and Canada.

The report in terms makes no finding on the allegation of undue prejudice, but says:

We find that the rates on hardwood lumber here assailed will be for the future unreasonable to the extent that they exceed the rates in effect August 25, 1920, by more than the amounts in cents per 100 pounds shown in the table below.

This sweeping finding of unreasonableness is not supported in the report by any citation of ton-mile earnings. From Memphis, for a haul of 1,238 miles to New York, the yield under current rates of 8 mills per ton-mile is reduced to 7.4 mills; to Chicago, for 532 miles, the ton-mile yield is reduced from 12 mills to 11.8 mills; to Cleveland, for 720 miles, from 11 mills to 10 mills; to Detroit, for a haul of 730 miles, from 10.4 mills to 9.7 mills. The yield per ton-mile found unreasonable in these instances is not compared with any ton-mile yield which is cited as a standard of reasonableness. If the rates prescribed were to be applied universally on lumber and forest products, the effect on carrier revenue might well prove revolutionary. No evidence of record is cited in the report that shows or tends to show

that the rates reduced are unreasonable from the standpoint of earnings thereunder.

Despite the absence of any findings upon the allegation of undue prejudice, the report says:

Complainants emphasize the fact that, because of the relatively long haul of hardwood lumber from southern points to consuming points in central and eastern trunk line territory, the percentage increase has had a peculiarly disturbing effect upon their business. We are convinced that there is merit in this point.

Whatever the merit in this point, it is to be observed, *per contra*, that under Ex Parte 74, hardwood rates from the southeast to Ohio River crossings, Cairo, Louisville, Evansville, Henderson, and Cincinnati, were increased but 25 per cent, while from competing points such as Wausau, Wis., and Cadillac, Mich., the corresponding increases to the same destinations were 33½ and 40 per cent, respectively.

Moreover, if we take Wausau, representing a typical northwestern producing point of hardwood lumber, the respective increases since June 24, 1918, including those under general order No. 28, as well as those under Ex Parte 74, as against Memphis are shown in the following table:

Haul.	Distance.	Rates in cents per 100 pounds.				Amounts of increases as result of this report.
		June 24, 1918.	June 25, 1918.	Present.	Amounts of increases.	
	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.
Wausau, Wis., to—						
Chicago, Ill. ....	317	10	12.5	17	7	7
Detroit, Mich. ....	589	20.5	25.5	34	13.5	13.5
Cleveland, Ohio. ....	674	21.6	28.5	35.5	13.9	13.9
Buffalo, N. Y. ....	838	24.7	29.5	39.5	14.8	14.8
Baltimore, Md. ....	1,114	27.5	32.5	44.5	17	17
Philadelphia, Pa. ....	1,134	28.5	33.5	45.5	17	17
New York, N. Y. ....	1,225	30.5	35.5	47.5	17	17
Memphis, Tenn., to—						
Louisville, Ky. ....	377	12	15	19	7	7
Chicago, Ill. ....	532	19.5	24.5	32.5	13	12
Cleveland, Ohio. ....	720	24.8	30	40	15.2	12.5
Detroit, Mich. ....	730	23.7	28.5	38	14.3	11.8
Buffalo, N. Y. ....	913	24.4	29.5	39.5	15.1	12.1
Baltimore, Md. ....	1,055	29	34	45.5	16.5	14
Philadelphia, Pa. ....	1,146	30	35	46.5	16.5	14
New York, N. Y. ....	1,238	32	37	49.5	17.5	14

From an inspection of the last column it appears that, distance considered, the aggregate increases from Wausau will be greater than from Memphis.

Under such a showing we must expect to be confronted with complaints from hardwood producers in the northwest and central freight association territory for corresponding reductions in their rates.

This prospect but illustrates the extensive dislocation we must anticipate in the rates on lumber. We have frequently required an equalization of rates on hard and soft woods. What reason can be cited why yellow-pine producers should not demand the same rates as apply on hard woods for the same haul? It is true that more southern pine moved for the year ended September 1, 1921, under the present level of rates than moved in the preceding year. But this is also largely true of 60 per cent of the hard woods, grades Nos. 1 and 2 moving in practically undiminished volume under the present rates. If the curtailed movement of 40 per cent of the lower-grade hard woods is to lower the general plane of hardwood rates, why should not the same considerations lower the entire plane of yellow-pine rates, because the plane of hardwood rates is reduced? If the yellow-pine rates are reduced, the rates on fir from the Pacific northwest will consistently come in for another reduction.

The record may warrant such findings and conclusions as were made in *National Live Stock Shippers League v. A., T. & S. F. Ry. Co.*, 63 I. C. C., 107, where we developed, on pages 116, 117, the fundamental principles which must guide us in rate situations analogous to this. It does not, in my opinion, warrant the broad finding here made of unlawfulness to the extent that rates in effect August 25, 1920, will be exceeded by more than determined amounts to some destinations and undetermined amounts to other destinations. This indefiniteness in itself demonstrates inability to prescribe the margin of reasonableness on movements to Canada, for example, or western trunk line territory, or the Ohio River crossings, from the widely differing points of origin which are indicated only by the names of states.

If the real basis for the finding is relationship of rates from the south to rates from Wisconsin and Michigan to common destinations, those northern rates are assumed as standards of reasonableness. They certainly are not so proved. The indeterminate standards of reasonableness on rates from the south set up by this report necessarily extend in their influence to all forest products from the south, and thus in turn affect all from the Pacific coast and inland empire, which will bring into direct issue the rates from Wisconsin and Michigan. Reduction there will start the wheel revolving again. But that is not all. Percentage increases such as were authorized in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325; *The Fifteen Per Cent Case*, 45 I. C. C., 303, and *Increased Rates, 1920*, 58 I. C. C., 220, for the imperative reasons there given, necessarily disturb the difference in amounts per unit then existing between rates for long hauls and those for shorter hauls. By the same reasoning as that here followed the rates for the longer hauls become unreasonable in proportion as they exceed the former differences, and this will apply

on every commodity as well as on all classes. More than that, any scale of distance class rates becomes unreasonable where the percentage relation between the classes remains constant with increasing distance, because the first-class rate grows faster per unit than the sixth class, as applied to hauls of 100, 200, or 300 miles.

The Commission thus in effect sets up a criterion of reasonableness which is impossible of application unless it be assumed that all rates in this country were reasonable on some past date. August 25, 1920, is the date taken here, although on that date all the general percentage increases had been made except that under Ex Parte 74. Logically we should go back to the fore part of 1914, and starting from that must find that every percentage increase was unlawful to the extent that it changed the difference in amounts per unit between rates for longer and shorter hauls. It is of the essence of percentage increase that it should do that very thing. I am unable to accept the doctrine that every carrier which has made percentage increases under our express authorization will violate the law in maintaining the rates so established, and this report is bedded on that doctrine, whether consciously or not.

The finding is particularly unfortunate because it comes at a time when we are conducting a general investigation to determine whether we may lawfully require further rate reductions than those already made, not including this, and without awaiting the outcome of that inquiry.

The findings in the report are really less serious in their immediate effect on carrier revenue than in their prospective effect on future rate adjustments generally. There seems not unlikely an eventual equilibrium of general prices perhaps 50 per cent over the prewar level. To the new level, whatever it be, an adjustment must eventually be made. But until carriers' costs have been adjusted thereto, the reduction in rates, if it outruns the contemporaneous reduction in expenses, means progressive inability to meet the needs of traffic, indefinite postponement of securing additions and betterments which the normal growth of traffic renders indispensable, and will only intensify the distress that is certain to come, if and when industry again resumes its normal stride. For this reason it is imperative that reductions which we require should be made upon a carefully reasoned program, and not upon such inadequate and tenuous grounds as we here cite for our action.

*EASTMAN, Commissioner, dissenting:*

The reductions which the majority require are not large in amount and are based on the desirability of restoring rate differences as they existed prior to August 26, 1920. While I agree that such restoration is desirable, it does not seem to me that this proves that the rates

assailed are unreasonable. The southern hardwood producers are clearly in desperate straits. Like the lumbermen of the Pacific northwest, the percentage increase of 1920 made it more difficult for them to compete with producers who are nearer the principal markets. They say that if their rates are reduced they will ship more lumber. This might well be reason for voluntary reductions by the carriers, at least for an experimental period, even greater than are now proposed, following the example of the carriers serving the lumbermen of the Pacific northwest. But not everything that the carriers may do voluntarily, as a matter of sound business policy, or that the government might do if it owned the roads, can be required by the government of privately owned carriers. I reach the conclusion with regret that the report of the majority does not furnish sufficient ground for a finding that the rates assailed are unreasonable.

66 I. C. C.

## INVESTIGATION AND SUSPENSION DOCKET No. 1398.

SALT FROM LOUISIANA MINES TO CHICAGO, ILL., ST.  
LOUIS, MO., AND INTERMEDIATE MAIN-LINE POINTS.

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*Submitted December 7, 1921. Decided January 23, 1922.*

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Proposed rate on salt, in carloads, minimum 80,000 pounds, from mines in Louisiana to Chicago, Ill., St. Louis, Mo., and intermediate main-line points on the Illinois Central and Yazoo & Mississippi Valley found unlawful. Suspended schedules ordered canceled and proceeding discontinued.

*Fred H. Wood* for Morgan's Louisiana & Texas Railroad & Steamship Company; *F. B. Bowes*, *V. D. Fort*, and *R. V. Fletcher* for Illinois Central Railroad Company; and *C. H. Guion* for Gulf Coast Lines, respondents.

*Luther M. Walter* and *John S. Burchmore* for Myles Salt Company, Jefferson Island Salt Company, and Roberts & Oake Packing Company; *Paul E. Blanchard* and *W. W. Manker* for Armour & Company; and *R. D. Rynder* for Swift & Company.

*Brown & Boyle* and *Ashley Bigelow* for Sterling Salt Company; *A. W. McLaren* and *W. T. Hickerson* for Kansas Rock Salt Company; *C. I. Pettibone* for Western Rock Salt Company and Royal Salt Company; *C. H. Humphreys* for Barton Salt Company; *T. H. Burgess* for Detroit Rock Salt Company; *Bevis Longstreth* for Bevis Rock Salt Company; *G. P. Kelly* for American Salt & Coal Company; *W. J. Tomkins* for independent salt manufacturers of Ohio and Michigan; and *C. M. Reed* for Kansas salt producers, protestants.

*W. J. Larrabee* for Delaware, Lackawanna & Western Railroad Company; *Marion B. Pierce*, *W. J. Larrabee*, and *E. H. Burgess* for trunk lines; *L. P. Day* for New York Central lines; *L. H. Strasser* for Wabash Railroad Company; *Henry G. Herbel* and *C. C. P. Rausch* for Missouri Pacific Railroad Company; *L. P. Day*, *Henry G. Herbel*, and *L. H. Strasser* for central freight association lines; and *D. L. Meyers* for Atchison, Topeka & Santa Fe Railway Company, protestants.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

*HALL, Commissioner:*

By schedules filed to become effective September 10 and October 10, 1921, respondents proposed to establish a rate of \$4.20 on salt, in carloads, minimum 80,000 pounds, from mines in Louisiana on the Southern Pacific and Gulf Coast lines, respectively, to Chicago, Ill., St. Louis, Mo., and directly intermediate main-line points north of Louisiana on the Illinois Central and Yazoo & Mississippi Valley. The proposed rate is subject to the provision that the weight-carrying capacity of the car used, where less than 80,000 pounds, will be the minimum. Protests were filed by shippers and carriers of salt from other producing fields and the operation of the schedules was suspended until February 7 and March 9, 1922, respectively. Rates are stated in amounts per net ton except as otherwise indicated.

The present rates range from \$4.59 to \$7.625, and are subject to a minimum of 30,000 pounds. Respondents do not propose to cancel them. They apply, and the proposed rate would apply, on "salt, in sacks, barrels, blocks (loose or crated), or in bulk." The determinative feature as between the present and the proposed rates would be the car loading. The resulting rate situation is depicted in the appended map.

The points of origin are Anse La Butte, Avery, Salt Mine, and Weeks Island on the Southern Pacific lines and Jefferson Island on the Gulf Coast lines, near one another and nearly due west of New Orleans, La. Salt Mine and Weeks Island are, respectively, 104 and 134 miles from Baton Rouge, La.; 155.5 and 144.5 miles from New Orleans; and, via Baton Rouge, 1,004 and 1,034 miles from Chicago. These distances include 20 constructive miles for Mississippi River transfers. Jefferson Island is just west of Salt Mine. The mine there is not fully opened and shipments thus far have consisted of the salt removed in sinking the shaft. The destinations to which the proposed rate would apply are all stations north of Louisiana on the main lines of the Illinois Central and Yazoo & Mississippi Valley to Chicago and St. Louis. Osyka, on the Illinois Central, 89 miles from New Orleans and 830 miles from Chicago, and Waukegan, on the Yazoo & Mississippi Valley, 41 miles from Baton Rouge and 864 miles from Chicago, are the first stations in Mississippi north of the Louisiana state line.

Halite (Cuylerville) and Retsof, both in western New York, Detroit, Mich., the Louisiana mines described, and several mines in central Kansas, are the principal rock-salt producing fields in the

United States. Rock salt from all these fields, except for "capping," can be used for substantially the same purposes, such as making brine, freezing ice cream, salting hides, charging ice machines, refrigerating, and supplying chemical laboratories and laundries. The production costs at all mines range from \$3.25 to \$3.50 per ton, and fall rapidly with increased daily output. In October, 1921, when this case was heard, the selling price of rock salt in Chicago was between \$8.50 and \$9 per ton, delivered, except to meat packers, who were paying \$7.

Evaporated salt is manufactured in Michigan, New York, Kansas, Ohio, California, Utah, and other states. The production cost is two to three times that of rock salt. In packing meats the two kinds of salt are used for separate and distinct purposes.

Louisiana and Detroit rock salt is similar in appearance to that produced at Halite, except that the latter is not quite so white. Louisiana salt is purer than the Detroit or Halite product, and when dissolved leaves little foreign matter. This is important when salt comes into direct contact with meat. The former, therefore, can be used for capping, by which is meant the placing of about 30 pounds of large crystal salt at the bottom and top of a barrel of meat. Comparatively little is used for this purpose, the aggregate for the entire United States being about 1,500 tons annually. Louisiana salt is said to be so clear, pure, and white that it may be marketed as table salt at small expense; but the producers state that the grinding, heating, and sifting of their salt, in preparation for successful competition with evaporated salt, is still in the experimental stages.

Chicago is the greatest salt market in the country, and consumes about 500,000 tons annually, of which the packers use approximately 100,000 tons. The output of the Detroit mine is insufficient to supply the maximum demands of this market. In 1920 the total quantity of salt produced in the United States was 6,965,188 tons, of which 1,677,631 tons were rock, 2,467,641 tons, evaporated, and 2,819,916 in brine.

From a transportation standpoint salt is low-grade, cheap, heavy-loading, requiring no expedited service, and subject to few loss and damage claims. Rock salt can be moved in cars which fall short of the condition of repair needed for sugar or flour. The average loading from Halite to Chicago is 78,000 pounds. Bulk salt is sometimes loaded to 110 per cent of the marked capacity of the car, and some packers have instructed shippers to so load. Package salt was loaded during the war almost as heavily as bulk salt, reaching 110,000 pounds. But salt will deteriorate if stored for any great length of time, and is affected by dampness, so that jobbers object to a high



carload minimum. Competition is keen, the margin of profit small, and the freight rates are highly competitive.

The following table gives rates on bulk salt from the Louisiana, Detroit, and Halite mines to Chicago, St. Louis, and a few points in Illinois to which the proposed rate would apply:

To—	From Louisiana mines.			From Detroit.		From Halite.	
	Dis- tance.	Pro- posed rate. <sup>1</sup>	Pres- ent rate. <sup>2</sup>	Dis- tance.	Rate. <sup>3</sup>	Dis- tance.	Rate. <sup>4</sup>
	<i>Miles.</i>			<i>Miles.</i>		<i>Miles.</i>	
Chicago, Ill. ....	1,004	\$4.20	\$5.13	272	* \$2.50	560	\$4.20
Kankakee, Ill. ....	948	4.20	6.345	326	2.90	560	* 5.90
Champaign, Ill. ....	876	4.20	6.345	338	4.10	621	* 6.50
Mattoon, Ill. ....	832	4.20	6.345	371	4.30	663	* 6.50
St. Louis, Mo. ....	794	4.20	4.59	488	* 4.10	770	* 6.90
Cairo, Ill. ....	639	4.20	4.59	559	5.70	538	* 7.10

<sup>1</sup> 80,000-pound minimum.

<sup>2</sup> 30,000-pound minimum.

<sup>3</sup> \$7,500-pound minimum.

<sup>4</sup> 40,000-pound minimum.

\* 60,000-pound minimum.

\* 10 cents higher over Illinois Central.

\* 40 cents higher over Illinois Central.

\* 60 cents higher over Illinois Central.

To Chicago from Detroit, as contrasted with Louisiana, the distance is 27 per cent, and the rate 49 and 60 per cent of the present and proposed rates, respectively, while from Halite the distance is 56 per cent, and the rate 82 per cent of the present rate but the same as the proposed rate.

The history of these rates to Chicago since January 1, 1910, and their relation to the Louisiana rates, may be summarized as follows:

Date of change.	From Louisi- ana.	From Detroit.		From Halite.	
	Rate per ton.	Rate per ton.	Under Louisi- ana.	Rate per ton.	Under Louisi- ana.
Jan. 1, 1910. ....	\$3.00	\$1.00	\$2.00	\$2.00	\$1.00
Oct. 26, 1914. ....		1.06	1.94		
July 1, 1915. ....				2.10	.90
Dec. 10, 1916. ....		1.20	1.80		
Apr. 18, 1918. ....		1.40	1.60	2.40	.60
June 25, 1918. ....	3.75	1.80	1.95	3.00	.75
Dec. 30, 1919. ....	3.80		2.00		.80
Aug. 26, 1920. ....	* 5.13	2.50	2.63	4.20	.93
Proposed. ....	4.20		1.70		

<sup>1</sup> To continue in effect subject to minimum of 30,000 pounds, as at present.

Since 1910 the increase in the rates to Chicago from Detroit has been 150 per cent, from Halite 110 per cent, and from Louisiana 71 per cent. The proposed rate from Louisiana would represent an increase of 40 per cent over the 1910 rate. The greater percentage increases in the rates from Detroit and Halite result from those authorized by us in *The Five Per Cent Cases* and *The Fifteen Per Cent Case*, and from the higher percentage of increase in the eastern group than on traffic from Louisiana allowed on July 29, 1920.

66 I. C. C.

Respondents state that the proposed rate was published at the urgent solicitation of the Louisiana producers, who first requested a lower rate to Chicago several months before the publication of the \$4.20 rate. According to their records, 197 cars moved in 1917 over the Illinois Central from the Louisiana mines to Chicago territory, 219 in 1918, 59 in 1919, and 35 from January to July, 1921. Because of the decline in this traffic they finally decided that in order to stimulate it and to enable these industries on their lines to secure a fair share of the business in the Chicago and St. Louis markets, a lower rate must be maintained. The \$4.20 rate was thereupon published to restore in part the rate difference over Detroit which obtained prior to June 25, 1918. Under the proposed rate this difference would be \$1.70. A difference of \$1.60 existed for a little over two months ending on that date. Before that the difference was \$1.80 or greater. To St. Louis the difference prior to June 25, 1918, was 45 cents; and under the proposed rate would be 10 cents.

The Louisiana mines on the Southern Pacific are served by daily local trains which transport the salt to Baton Rouge. These do not now handle maximum tonnage, and the Southern Pacific contends that it could haul the additional tonnage anticipated as a consequence of the proposed rate with little additional expense. A witness for the Illinois Central system referred to the favorable operating conditions on the lines of that system traversing the low-rated Mississippi Valley, and said that cars loaded with salt may be handled at convenience to fill out trains which would otherwise move light. There is no appreciable empty return movement.

Respondents say that salt from the Louisiana mines to Chicago territory is generally loaded to the carrying capacity of the car, which is 110,000 pounds (marked capacity 100,000 pounds) in the case of two-thirds of the box-car equipment of the Southern Pacific and one-third of that of the Illinois Central. They estimate that under the \$4.20 rate the revenue on a carload of 110,000 pounds to Chicago would be \$231.10 and 22.5 cents per car-mile. They say that the proposed rate is low but not abnormal, and will at least defray out-of-pocket expenses.

Using the 80,000-pound minimum, respondents show that the car-mile earnings under the proposed rate to Chicago from Weeks Island and Salt Mine would be about 16.4 and 16.9 cents, respectively. With these they compare lower earnings on cattle from certain points in Texas and Louisiana to Chicago, St. Louis, and Omaha, Nebr., based upon a minimum weight of 22,000 pounds for cars 36 feet 7 inches and less in length, under rates recommended in *National Live Stock Shippers' League v. A., T. & S. F. Ry. Co.*,

63 I. C. C., 107; and they emphasize the difference in the handling of the two commodities. Comparisons are also made with the car-mile earnings, based upon a minimum of 40,000 pounds, of 14.8 cents on oyster shells from Houma, La., to Chicago and other Illinois points under a rate of \$7.30; and of 14.6 and 15.1 cents on coke from Chicago and Stonega, W. Va., respectively, to Texas destinations under rates ranging from \$7.765 to \$9.595.

The following table is representative of other exhibits introduced by respondents. It compares the earnings under the proposed rates with those under certain import and domestic commodity rates. The weights used are said to be the average loading of the commodities named.

Commodity.	From—	To—	Weight used.	Rate. <sup>1</sup>	Distances used. <sup>2</sup>	Earnings per car-mile.
			<i>Pounds.</i>		<i>Miles.</i>	<i>Cents.</i>
Salt.....	Weeks Island...	Chicago.....	88,000	21	1,023	18
Do.....	Salt Mine.....	do.....	88,000	21	992	18.8
Do.....	Jefferson Island.....	do.....	88,000	21	1,020	18.1
Horses and mules.....	Chicago.....	New Orleans.....		<sup>1</sup> \$186.50	932	20
Cattle.....	New Orleans.....	Chicago.....	20,000	67.5	932	14.8
Moss.....	do.....	do.....	21,000	50	932	11.3
Sisal, import.....	do.....	do.....	27,000	43.5	932	12.6
Bananas, import <sup>3</sup> .....	do.....	do.....	22,000	88.5	932	20.9
Molasses.....	do.....	do.....	39,200	48.5	932	20.4
Denatured alcohol.....	do.....	do.....	34,200	45.5	932	16.7
Oyster shells.....	do.....	do.....	42,240	34.5	932	15.6
Bags and bagging.....	do.....	do.....	36,480	42	932	16.4
Paper.....	Ashland, Wis.....	New Orleans.....	30,000	58	1,362	12.5
Coffee, import.....	New Orleans.....	Chicago.....	35,000	60	932	22.5
Fullers' earth, import.....	do.....	do.....	64,000	36	932	24.7
Mahogany logs, import.....	do.....	do.....	50,000	42.5	932	22.5
Meats, fresh.....	Chicago.....	New Orleans.....	21,000	90	932	20.4
Packing-house products.....	do.....	do.....	30,000	65.5	932	21.1
Coal.....	Nortonville, Ky.....	do.....	100,000	<sup>1</sup> \$2.82	649	21.8
Do.....	Herrin, Ill.....	do.....	100,000	<sup>1</sup> \$3.00	635	23.5

<sup>1</sup> Rates are stated in cents per 100 pounds except that on coal the unit is a ton, and on horses and mules a car.

<sup>2</sup> Hauls on salt and paper are two-line, all others one-line.

<sup>3</sup> Handled in trainloads.

Producers of salt at Weeks Island and Jefferson Island appeared in support of the proposed rate. They deem the Chicago and St. Louis markets essential for the disposition of their normal output because southern territory, to which the rates from Louisiana are generally lower than from the other mines, is thinly populated and the consumption of salt not great. That territory, they assert, can not now absorb the present production of the Louisiana mines, and, with the early completion of the Jefferson Island mine, operating upon a proved area of some 50 acres of salt to a depth of over 2,000 feet, additional markets must be sought. The witness for this mine says that Detroit is its only competitor in the Chicago and St. Louis markets, but does not admit that competition from the other fields is

negligible. With a rate to Chicago of \$1.70 over that from Detroit, the same as from the Halite mine, he said that Louisiana would "get just what Detroit could not handle."

By using the applicable minima, ranging from 14,000 to 80,000 pounds, and 3,399 miles, the distance via New Orleans, the Jefferson Island producer shows that under the rates from San Francisco, Calif., to Chicago on beans, canned goods, fish, sugar, cooperage, fertilizer, fiber, glue stock, poultry and stock food, grinding pebbles, salt, alfalfa meal, asphalt, bags and bagging, bark, borax, casein, pickled cauliflower, and coffee, the car-mile earnings are generally lower, averaging 15.9 cents, than on salt from Weeks Island to Chicago via Baton Rouge. The witness introducing these exhibits conceded that no salt moves under the rate from San Francisco, and could not say whether the cooperage or pebbles ever moved. The record does not otherwise indicate whether these commodities move over that roundabout route. Although contending for a rate to Chicago from Louisiana for 1,004 miles equal to that from Halite for 560 miles, he expressed the belief that California and Utah were also entitled to reasonable salt rates to Chicago in order that they might compete with Detroit, but said that, with a rate of \$4.20 from Louisiana, something like \$8 would be reasonable from California over the shorter routes, estimated at 2,500 miles.

The Weeks Island producer urges that the consumer would benefit by the resulting additional competition in salt. Several meat packers at Chicago take this view and appeared in support thereof. They consider that rates on salt should be low, even to the extent of yielding less revenue than that on other commodities, and but little above the cost of service.

One of these packers shows that the car-mile earnings on salt under the proposed rate and minimum from Weeks Island to Chicago and St. Louis, two-line hauls, would be higher than those on fertilizer, caustic soda, asphalt, cement, bones, bags and bagging, brewers' rice, and tin scrap between Chicago-St. Louis and New Orleans, and between Mississippi Valley points, for shorter one-line hauls based on minima ranging from 30,000 to 40,000 pounds, and that the car-mile earnings, minima 36,000 and 40,000 pounds, under certain import commodity rates from Gulf ports to Chicago and St. Louis are, generally speaking, slightly lower than those under the proposed rate.

The Halite protestant markets about 10 per cent of its output in Chicago territory, the tonnage exceeding that from Louisiana. It contends that the present rate adjustment leaves it at a disadvantage which will be increased by the proposed rate in disregard of its geographical advantage. It urges that if the proposed rate goes

into effect the natural consequence would be a reduction in the rates from Detroit, Halite, and Kansas to maintain the present relationship. Its witness said that he could find no joint rate of Morgan's Louisiana & Texas and the Illinois Central on any commodity as low as that proposed. If the proposed \$4.20 rate is reasonable for 560 miles in official territory the Halite protestant considers it unduly low for application to a haul almost twice as long, largely in southern territory. Thus the earnings per ton-mile on bulk salt to Chicago from Halite and Louisiana are 7.5 mills and 5.2 mills, respectively, and, under the proposed rate from Louisiana would be 4.2 mills. After absorbing the switching charge of 2 cents per 100 pounds in order to effect delivery at the stock yards in Chicago there would be left 3.8 mills. These earnings are compared with the following average ton-mile and car-mile yield on all freight as shown by the annual reports of the respondents named, although it is conceded that such figures are averages and that the haul from Louisiana to Chicago is much longer than the average haul:

Year.	Illinois Central.		Morgan's Louisiana & Texas.	
	Per ton-mile.	Per car-mile.	Per ton-mile.	Per car-mile.
	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
1917.....	5.62	13.485	11.23	26.169
1918.....	6.37	16.552	12.45	33.525
1919.....	7.59	18.381	13.75	34.544
1920.....	7.77	20.987	15.84	39.068

The operating ratios for 1920 of the Illinois Central and Morgan's Louisiana & Texas were 97.1 and 91.6 per cent, respectively.

The Halite protestant also compared the ton-mile earnings on salt from Louisiana to Chicago with the average freight-train service cost for the six months ended June 30, 1921, of class-I steam roads in southern territory, given as approximately 3.07 mills per ton-mile under selected expense accounts covering locomotive repairs, engine-house expenses, enginemen, trainmen, fuel, and other locomotive and train supplies, but not including items of expense such as maintenance of way, structures, and equipment, and superintendence.

Because of the rate adjustment this protestant has never been able to get into the St. Louis market although the haul is about the same as from the Louisiana mines. It has been doing a good business at many points in Illinois intermediate to Chicago, but under the proposed rate the Louisiana mines would have the rate advantage for longer hauls than from Halite.

Stress is laid on the fact that since 1907 the rates on salt in bulk and in packages to Chicago from Louisiana have been the same, whereas from Halite the package-salt rates have been higher than on bulk salt. During that time the package-salt rate from Halite has ranged from 81 cents below to 77 cents over the Louisiana rate. The proposed rate to Chicago, which would apply on either package or bulk salt, is \$1.70 below the package-salt rate from Halite. Respondents say that they are merely adhering to the method always used in publishing these rates. The rates from Halite to Illinois points outside of Chicago territory generally apply on both bulk and package salt.

Michigan and Ohio manufacturers of evaporated salt base their protest on the ground that if the proposed rate becomes effective the Louisiana producers will be able to market table salt in Michigan itself, because the production cost is higher there than in Louisiana. These manufacturers have been losing their markets on the Atlantic seaboard because of competition from Germany since the cessation of hostilities. They make the following comparisons of rates on salt, in packages, the usual manner in which evaporated salt is shipped, from the Louisiana and Detroit fields:

To—	From Louisiana.			From Detroit.	
	Distance.	Present rate.	Proposed rate.	Distance.	Rate.
	<i>Miles.</i>			<i>Miles.</i>	
Chicago, Ill. ....	994	\$5.13	\$4.20	272	\$2.93
Champaign, Ill. ....	854	6.345	4.20	338	4.10
St. Louis, Mo. ....	772	4.59	4.20	483	4.90
Cairo, Ill. ....	625	4.59	4.20	559	4.70
Memphis, Tenn. ....	454	4.59	4.20	729	5.70
New Orleans, La. ....	150	2.50	.....	1,050	8.40
Detroit, Mich. ....	1,175	6.935	.....	.....	.....
Kansas City, Mo. ....	855	6.345	.....	716	6.70

The proposed rate to Cairo, a two-line haul of 625 miles, is also compared with the present rate of \$5.70 for a single-line haul of 575 miles from Cleveland, Ohio, to the same destination.

The Kansas protestants oppose the proposed rate because it would widen the spread between their rates and those from Louisiana to St. Louis and Illinois points. The present rates to these destinations from Louisiana are lower than the rates from the Kansas mines and several complaints growing out of this situation are now before us. Their position is that salt rates should be so readjusted that, to Chicago, Kansas would have rates substantially similar to those now maintained from the New York mines, since the distances are approximately the same; and lower rates to that market than those

from Louisiana because the distance from Kansas is little more than half of that from Louisiana to Chicago. They say that their sales in Chicago are inconsiderable and have resulted in loss.

These protestants show the following short-line distances and rates from representative Kansas producing points:

From—	Memphis, Tenn. <sup>1</sup>		Cairo, Ill. <sup>1</sup>		St. Louis, Mo. <sup>1</sup>		Chicago, Ill. <sup>2</sup>	
	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>	
Hutchinson, Kans. ....	660	\$ 5. 80	733	\$7. 40	498	\$5. 30	677	\$7. 00
Kanopolis, Kans. ....	716	* 5. 80	789	7. 40	532	5. 30	780	7. 00
Little River, Kans. ....	643	.....	716	.....	502	5. 30	681	7. 00

<sup>1</sup> Minimum, 37,500 pounds.

<sup>2</sup> Minimum, 80,000 pounds.

\* In packages, \$5.90.

The Little River producer suggests a distance scale, minimum 80,000 pounds, as the solution of the difficulty. This begins with 7.5 cents per 100 pounds for 25 miles, progresses 0.5 cent for each 25 miles up to 875 miles, and thereafter 0.5 cent for each 50 miles. The other Kansas producers represented at the hearing expressed approval of a distance scale, as did the Chicago meat packer owning the Little River mine. The Halite protestant considers an exact distance scale unnecessary and favors a satisfactory blanketing of the rates, but believes that the Louisiana, Halite, and Kansas rates should be on the same relative distance basis. The Southern Pacific and the producer at Weeks Island object to a distance scale because it would build a "rate wall" around each salt field. Other Chicago packers are opposed to a distance scale and suggest that, in determining the rate advantages which should accrue because of location, different consideration should be given where the placement of an industry is fixed by nature than is given where an industry is established by man in the exercise of his judgment.

The several protesting carriers serve the fields which compete with Louisiana and are apprehensive that the proposed rate will compel reductions from their fields to common destinations, thereby resulting in depletion of their sorely needed revenues. The Wabash contends that a carrier can not radically change the rate on a commodity moving in large volume, especially one so highly competitive as salt, without precipitating a rate disturbance. Salt is produced on its line within the Detroit switching limits, and constitutes 15 per cent of its outbound tonnage from that city. Its witness stated that if the proposed rate becomes effective the Wabash will immediately reduce its rates from Michigan to Chicago, or, if deprived of that market, it will seek others; and pointed out that the

Wabash lines extend to Omaha, Kansas City, Mo., Des Moines and Ottumwa, Iowa, Buffalo, N. Y., National Stock Yards, Ill., and St. Louis, where much salt is consumed.

The Atchison, Topeka & Santa Fe has a direct line from the Kansas mines to Chicago. Its witness said that it would go to any reasonable length to protect the interests of its shippers if the proposed rate is permitted to become effective; and that the inability thus far of Kansas mines to share in the Chicago business is no reason for continuing to exclude them, inasmuch as the production has greatly increased and new mines have been opened, as in Louisiana. Exhibits were introduced to show that Louisiana now has more favorable rates for comparable distances than other salt fields.

In order to obviate departures from the long-and-short-haul provision of the fourth section of the interstate commerce act respondents proposed to blanket the \$4.20 rate from Chicago and St. Louis back over their direct rails to the east-and-west Mississippi-Louisiana state line, thus confining it to interstate destinations on the so-called main lines of the Illinois Central and Yazoo & Mississippi Valley. An examination of the suspended schedules discloses many instances where such departures might occur under the proposed rate. We have heretofore required the cancellation of suspended schedules because of threatened violations of this provision of the fourth section. *Rice Products to Jackson, Miss.*, 44 I. C. C., 364. A few illustrations of the departures here threatened will suffice.

A witness for the Illinois Central system testified that, for operating reasons, freight traffic between New Orleans and Chicago-St. Louis is handled over the Illinois Central to Jackson, Miss., and the Yazoo & Mississippi Valley to Memphis, through Yazoo City and Gwin, Miss., known as the "Gwin route." The proposed rate would not apply to points on that route, but would apply to destinations on the Illinois Central's line through Grenada, Miss. Charges on an 80,000-pound carload would therefore be considerably greater to a point on the Gwin route than would apply to Memphis or beyond. This would constitute a fourth section departure without appropriate protection, irrespective of the fact that the Gwin route is preferred, for operating reasons only, to one 20 miles shorter. *Inman-Poulsen Lumber Co. v. S. P. Co.*, 42 I. C. C., 275, 279.

To Jackson the rate via New Orleans and the New Orleans Great Northern is and would be \$5.825; over that route, and the Illinois Central or Yazoo & Mississippi Valley beyond, the proposed rate would be \$4.20. The \$5.825 rate is now protected by fourth section order No. 5307 but the proposed rate would widen the departure therein authorized and would not be protected.



To Cairo from Southern Pacific mines via Alexandria, La., and from the mine on the Gulf Coast lines via Kinder, La., and the Missouri Pacific beyond, the rate is \$4.59. Over the same routes, for Illinois Central delivery, the present \$4.59 rate and the proposed \$4.20 rate would apply. At points short of Cairo on the Missouri Pacific rates as high as \$7.29 would apply. Dexter, Mo., is an instance. Such departures would be without appropriate protection so far as the proposed rate is concerned.

To Redwood, Miss., from mines on the Southern Pacific the present rate is \$6.825. It is proposed to apply thereto the \$4.20 rate either via Baton Rouge and the Yazoo & Mississippi Valley or via New Orleans and the Illinois Central. This is the only point, except Memphis, on the Yazoo & Mississippi Valley to which the proposed rate would apply by either of these routes. Traffic to other points on the Yazoo & Mississippi Valley must, under the tariff, move via New Orleans and the Yazoo & Mississippi Valley, although respondents stated that most of this traffic would move through the Baton Rouge gateway. By that route the present higher rates would apply to points on the Yazoo & Mississippi Valley intermediate to Redwood and Memphis.

Respondents could not name any commodity moving through the Mississippi Valley on which the rate is blanketed from Memphis to Chicago, 528 miles. The proposed rate is blanketed back for a distance of about 850 miles out of a 1,000-mile haul. In *Chamber of Commerce of Johnson City, Tenn., v. S. Ry. Co.*, 64, I. C. C., 709, 726, we specifically withheld approval of a comparatively narrow grouping of points of origin because the length of the group in the direction of movement was nearly as great as the hauls from the nearest point in the group to the destinations there under consideration.

To intermediate intrastate destinations 218 miles and less from the Louisiana mines the present rates, ranging as high as \$5.20, will remain unchanged.

From the Louisiana mines these respondents maintain a rate of \$6.345 to Peoria, Ill., 921 miles, and \$5.065 to Louisville, Ky., 848 miles, both reached by the Illinois Central, and also participate in a rate of \$5.805 to Cudahy and Milwaukee, Wis., respectively 68 and 75 miles beyond Chicago.

An 80,000-pound carload to Natchez, Miss., on the Yazoo & Mississippi Valley, 229 miles from Salt Mine and 28 miles off of the main line, would be charged a rate of \$4.925 compared with the proposed rate of \$4.20 to Memphis, St. Louis, and Chicago. The haul to the latter is more than four times that to Natchez. Respondents

concede that salt moves to Natchez in carloads, but not for packing-house purposes.

To Indianapolis, Ind., a packing center 982 miles from the Louisiana mines and served by the Illinois Central, these respondents propose no change in their present rate of \$5.065, which is lower than the present rate to Chicago but higher than the proposed rate. This clearly would result in undue prejudice to Indianapolis. "The interstate commerce act is not only designed to cure violations thereof but also to prevent them." *Coal from Detroit, Toledo & Ironton R. R. Mines*, 64 I. C. C., 564.

It is clear that the rates from the several salt-producing fields to the consuming points should be related. A proper rate relationship between competitive groups is in many respects of greater importance to the shipping public than the measure of the rate itself. *Coal from Detroit, Toledo & Ironton R. R. Mines*, *supra*. In the present proceeding we have before us the rates only from the Louisiana mines to certain destinations, and the record does not afford a satisfactory basis for determining lawful rates on this traffic. But we think that the interested producers, carriers, and consumers of salt should confer with a view to establishing a satisfactory rate structure, giving due consideration to such elements as distance and territory traversed, competitive conditions, carload minima, and whether rates and minima should be provided for package salt differing from those for bulk salt.

We are of opinion and find that the proposed rate would be unlawful. An order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1391.  
TRANSIT PRIVILEGES ON LUMBER AT MEMPHIS,  
TENN., AND LOUISVILLE, KY., ORIGINATING IN AR-  
KANSAS AND LOUISIANA.

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*Submitted November 12, 1921. Decided January 17, 1922.*

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Order suspending schedules proposing to withdraw existing transit arrangements in connection with the joint rates on lumber, in carloads, moving by way of Memphis, Tenn., or Louisville, Ky., from points on the Chicago, Rock Island & Pacific in Arkansas and Louisiana to various northern points, vacated.

*A. B. Enoch* for respondents.

*Norman & Graham* and *G. F. Graham* for protestant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

DANIELS, *Commissioner*:

By schedules filed to become effective September 5, 1921, respondents proposed to withdraw existing transit arrangements in connection with the joint rates on lumber, in carloads, moving by way of Memphis, Tenn., or Louisville, Ky., from points on the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, in Arkansas and Louisiana to points in Canada, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, and West Virginia. Tariffs now in effect permit the stopping of lumber at certain points between origin and destination, for yarding, grading, drying, dressing, or further manufacture. Upon protest of the Southern Hardwood Traffic Association on behalf of its members handling lumber at Memphis and Louisville and operating mills in Arkansas, the schedules were suspended until February 2, 1922.

In *Southern Hardwood Traffic Asso. v. Director General*, 61 I. C. C., 132, we found that defendants' participation in tariffs carrying joint rates on lumber and forest products applying through Memphis or Louisville from an extensive territory, including the origin points here in question, to various points, particularly in the north, permitting transit in connection with such joint rates at points other than Memphis and Louisville while contemporaneously denying similar transit arrangements at those cities on the same through routes, subjected complainants to undue prejudice and disadvantage.

63 I. C. C.

For reasons pointed out in the report the complaint was withdrawn as to certain defendants so far as transit at Memphis was concerned, but an order was entered giving effect to our findings, directed against other defendants, including the Rock Island.

Complying with that order, and prior to the proposed effective date of the suspended schedules, a number of carriers, including the Louisville & Nashville and Illinois Central, established transit at Memphis and Louisville, applicable on traffic drawn into those points by the lines according the transit arrangement, similar to that accorded at Buffalo, N. Y., and other northern competitive points. As the tariffs naming the joint rates contain the usual provisions authorizing such services as provided by the tariffs of the various participating carriers, the transit so authorized, subject to the transit charges provided, became automatically applicable in connection with the joint rates participated in by those carriers. The suspended schedules propose to withdraw transit on the traffic in question at all points over routes through Memphis and Louisville.

On the date of our decision in *Southern Hardwood Traffic Asso. v. Director General*, *supra*, we made a substantially similar report and order in *American Creosoting Co. v. Director General*, 61 I. C. C., 145. A suit was brought in the federal district court for the district of New Jersey to enjoin the enforcement of the order in the latter case. Application for a preliminary injunction was denied. On appeal, the Supreme Court of the United States reversed the order of the district court and held our order invalid in *U. R. R. Co. of N. J. v. United States*, decided December 5, 1921. In view of this opinion of the Supreme Court we have vacated and set aside our order of March 15, 1921, in the *Southern Hardwood Traffic Asso. Case*.

The present proceeding is an outgrowth of the case just mentioned. It was heard at a time when our order was presumed to be valid. The present situation differs essentially from that existing at the time the tariff was filed and at the time of the hearing. Under the circumstances we believe that we should vacate our order of suspension and discontinue this investigation, without prejudice to the right of any party to take such action in the premises as he may deem proper, and that course will be pursued.

An appropriate order will be entered.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1412.  
NONAPPLICATION OF GROUP-J RATES FROM AND TO  
D. & R. G. W. STATIONS SOUTH AND EAST OF GRAND  
JUNCTION, COLO.

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*Submitted January 10, 1922. Decided January 18, 1922.*

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Proposed definite restriction to Colorado common points and Santa Fe, N. Mex., of group-J rates applicable between Pacific coast points and points in Colorado and New Mexico by way of Denver & Rio Grande Western Railroad found justified. Orders of suspension vacated and proceeding discontinued.

*J. G. McMurry and Elroy N. Clark* for respondents.

*Carl Whitehead and Albert L. Vogel* for protestants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.  
BY DIVISION 4:

By schedules filed to become effective October 3 and November 15, 1921, it is proposed definitely to eliminate certain stations on the Denver & Rio Grande Western, hereinafter called respondent, from the application of group-J rates from and to Pacific coast points south of and including Portland, Oreg., hereinafter termed coast points, to and from certain points in Colorado and New Mexico, among others. Upon protest of the San Luis Valley Federation of Commerce, Romeo, Colo., operation of the schedules was suspended until March 2 and March 15, 1922, respectively.

The present transcontinental tariffs specifically provide for the application of group-J rates from and to coast points to and from the stations on respondent's line, Denver to Trinidad, Colo., including Walsenburg, Colo., hereafter called common points, and Santa Fe, N. Mex. Protestants contend that these rates also apply between the coast points and stations intermediate Walsenburg and Santa Fe under the following intermediate application rules published in the eastbound and westbound tariffs, respectively:

Except as otherwise specifically provided in tariff, rate to an unnamed point located between any two points to which rates are named in tariff, will be the same as the rate to the higher rated of the points between which such unnamed point is located. A point not named in individual rate items will take the rate applicable to the higher rated of the points between which such unnamed point is located, notwithstanding that such point may be named in other commodity or class rate items.

Except as otherwise provided \* \* \* when rates are not specifically provided for from stations located directly intermediate to and on the same line or route with stations from which rates are specifically provided, apply the rate which is specifically provided from the next more distant point on that line or route.

With this contention respondent disagrees but, in order to remove any doubt, proposes to add the following to the present restriction that rates from Santa Fe via its line will not apply from intermediate points:

Except as otherwise specifically provided, rates named in this tariff (and as amended) will not apply from nor via points on the Denver and Rio Grande Western Railroad south and east of Grand Junction, Colo., via Montrose and Gunnison, south of Salida, Colo., west of Mutual, Colo., and north of Santa Fe, N. Mex.

In the suspended schedules similar restriction is also proposed in connection with the rates from the Pacific coast.

The line of the Denver & Rio Grande Western west of Walsenburg, Colo., extends through Mutual, Colo., to Alamosa, Colo.; thence one branch continues west to Creede, Colo., while another continues south as a three-rail line, to Antonito, Colo., and beyond to Santa Fe, N. Mex., as a narrow-gauge line. Respondent also has a narrow-gauge line running north from Alamosa to Salida, this being much more direct than its standard-gauge route between the two last-mentioned points which lies to the east through Pueblo, Colo., and Walsenburg.

The only through standard-gauge route to the common points from the Pacific coast in connection with respondent's line extends through Grand Junction, over Tennessee Pass, through Salida and Canon City to Pueblo, and thence north to Denver and south to Walsenburg and Trinidad. This is, and for many years past has been, the sole route used by respondent for through traffic between the coast and the common points. There are other possible routes made up of its narrow-gauge lines extending between Montrose and Salida and Salida and Santa Fe (through Alamosa and Antonito), and the standard-gauge lines connecting Grand Junction and Montrose, and Walsenburg and Alamosa, but no through traffic between the coast and the common points is ever so handled, principally because of the difficulties encountered in operating over the narrow-gauge tracks, which render their use in connection with such through traffic quite impracticable. In addition to the delays, loss and damage claims, and the expense incident to the transfer into and out of standard-gauge equipment out of and into narrow-gauge cars, the operating costs are said to exceed those for standard-gauge lines by approximately 20 per cent, due largely to the smaller units of motive power and of equipment. There are also adverse grades of 4 per cent

at Marshall Pass and Cerro Summit, on the line east from Montrose, and from 3 to 4 per cent between Poncha Junction and Poncha Pass, on the Salida-Santa Fe line.

Traffic between the coast points and Santa Fe via respondent's rails moves over the narrow-gauge line connecting Alamosa and Santa Fe, but the group-J rates applicable thereto are at present definitely restricted, as previously stated, so as not to apply at intermediate points, relief from the provisions of the fourth section of the act having been granted in fourth section order No. 4859, issued April 27, 1915.

In *Montrose & Delta Counties Freight Rate Asso. v. R. R. Co.*, 34 I. C. C., 393, we found that certain stations on respondent's line extending from Montrose to Grand Junction were local branch-line points, not on the route used for through shipments from the Missouri River and eastern territory, and not intermediate to Grand Junction or Salt Lake City on traffic from Missouri River points and points east thereof. The facts and circumstances which led us to those conclusions are fully set forth in our report. They are either identical with or similar to those here present, and apply with equal force to traffic moving in connection with respondent's line between the coast and the common points by way of Salt Lake City. It follows that by that route stations on other than respondent's standard-gauge line are not intermediate between the coast and the common points nor entitled to the group-J rates under the intermediate application rules; and that from the restricted points herein considered the proposed tariffs effectuate no increase in the present rates which are properly made by the addition of respondent's local rates to the joint rates applicable from the nearest junction point.

This leaves for consideration traffic via Santa Fe and the Atchison, Topeka & Santa Fe, hereinafter called the Atchison, between the coast points and what is known as the San Luis Valley, which may be said to embrace the territory served by respondent's standard-gauge line extending from Walsenburg to Creede and the narrow-gauge lines extending from Alamosa north to Salida and south to Santa Fe. It is protestants' position that under the present tariffs traffic from Walsenburg to the coast points may move over respondent's line through Alamosa to Santa Fe and thence over the Atchison; that by that route points in the San Luis Valley intermediate Walsenburg and Santa Fe are entitled under the intermediate application rules above quoted to the group-J rates; and that the proposed restrictions will therefore result in increases to the extent of respondent's local rates to either Walsenburg or Santa Fe, whichever makes lower. Respondent has consistently refused to apply on traffic from and to the valley points other than the combina-

tion basis, except on certain outbound commodities as to which a lower basis has been made specifically applicable for competitive reasons or to foster certain industries.

Here, as in the *Montrose Case*, the answer to protestants' contentions lies in the fact that no through traffic between the coast and the common points moves in connection with respondent's lines other than through Pueblo and over Tennessee Pass. Via that route, of course, the valley points are not intermediate to any points taking group-J rates except Santa Fe and, as hereinbefore stated, the charging of rates to and from that point lower than to or from intermediate points south of Salida was and is authorized by us. The operating difficulties incident to a movement via the narrow-gauge line between Montrose and Salida, described in the *Montrose Case* as well as in this report, are likewise present between Salida and Santa Fe, and there are also adverse grades of from 3 to 4 per cent at LaVeta Pass, just west of Walsenburg.

We find, therefore, that notwithstanding the absence of routing restrictions in the present tariffs, there is no practicable through route in connection with respondent's line by way of Santa Fe and the Atchison; that the valley points are not intermediate to Walsenburg by any route used or usable for through traffic between that point and the coast points; and that the proposed restrictions making group-J rates inapplicable at certain points effect no change, but merely clarify the tariffs—a commendable thing. In view of this finding, there is no necessity for discussing the evidence introduced by the parties relative to the measure of the rates under consideration.

An order will be entered vacating our order of suspension and discontinuing the proceeding.



INVESTIGATION AND SUSPENSION DOCKET No. 1404.  
IRON AND STEEL ARTICLES FROM BOSTON AND OTHER  
POINTS TO MAINE CENTRAL RAILROAD DESTINA-  
TIONS.

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*Submitted October 27, 1921. Decided January 14, 1922.*

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Proposed increased rates on iron and steel articles from Boston, Mass., and other points to Maine Central destinations found not justified. Suspended schedule ordered canceled.

*W. A. Cole* for Boston & Maine Railroad and *Charles H. Blatchford* for Maine Central Railroad Company, respondents.

*A. Van Allen Thomason* for various protestants.

*George F. Feeney* for Portland Chamber of Commerce.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

BY DIVISION 3:

By Boston & Maine Railroad tariff I. C. C. No. A-2368, filed to become effective September 26, 1921, respondents propose to cancel the less-than-carload commodity rates now published on iron and steel articles from Boston, Mass., and other near-by points, including also Gloucester, Worcester, Fitchburg, and Clinton, Mass., to destinations on the Maine Central, thereby making applicable the higher fourth-class rates. Upon protest filed by jobbers at Boston, the tariff was suspended until February 23, 1922. Rates will be stated in cents per 100 pounds, those from Boston being referred to as representative.

Iron and steel articles, less than carloads, are rated fourth class in official classification. For many years the Boston & Maine had in effect on these articles local commodity rates lower than the class rates. By order No. 385 of the New Hampshire Public Service Commission, entered in 1914, new and higher local rates equal to 110 per cent of the corresponding fifth-class rates were permitted to be published. This basis was three years later made applicable also from points on the Boston & Maine to destinations on the Maine Central. When the class rates in New England were revised in 1919 and the so-called Anderson scale was made effective, the rates theretofore published by respondents on the 110 per cent basis were not revised with the class rates but were continued as commodity rates. The maintenance of commodity rates from Boston and the application from Portland, Me., of fourth-class rates to points on the Maine

66 I. C. C.

Central, has led to complaint from Portland jobbers. The rate from Boston to Calais, Me., is 49 cents; from Portland, directly intermediate, the rate on intrastate traffic is 51.5 cents. To Eastport, Me., the Boston rate is 45 cents and the Portland rate 50.5 cents. To put the Boston rates on what they regard as the proper basis, respondents propose to establish from that point the class basis which applies from Portland. The result will be increases in the present rates, amounting in some cases to more than 30 per cent.

This action is proposed at the request of the Maine Central and to meet the protests of Portland jobbers, who, being 108 miles nearer than Boston to Maine Central points, regard the latter as their natural jobbing territory. At the hearing Portland jobbers asked that they be placed on a "basis relatively the same as Boston" and are not concerned whether this be accomplished by increasing the Boston rates or by reducing the Portland rates. Their business is said to be highly competitive and the profits small. Respondents testified that the bulk of the traffic to Maine Central points originates outside of New England, the Boston shipments amounting to but 10 or 12 per cent of the total. The shipments are in small lots and under the circumstances the position of respondents is that there is no need for commodity rates. Representatives of four Boston concerns testified at the hearing that their combined annual shipments into this territory were between 2,200 and 2,500 tons.

The principal complaint of the Boston jobber is that while his rates are being increased to the class basis similar action is not being taken with respect to rates from points with which he competes, particularly Hartford and Bridgeport, Conn., and Providence, R. I. Rates from these three points to Maine Central destinations are concurred in by respondents and are at the present time generally lower than the Boston rates. If the proposed rates are made effective without like change in the rates from competing points this disparity will be widened, although the distance in practically every instance is in favor of Boston. In the following table are shown the rates, present and proposed, from Boston to four representative destinations on the Maine Central, also rates to the same destinations from Bridgeport, Providence, and Hartford:

To—	From Boston.			From Providence.		From Hartford.		From Bridgeport.	
	Distance.	Present rate.	Proposed rate.	Distance.	Rate.	Distance.	Rate.	Distance.	Rate.
	Miles.	Cents.	Cents.	Miles.	Cents.	Miles.	Cents.	Miles.	Cents.
Auburn.....	144	31	41	215	31	252	34.5	317	34.5
Damariscotta Mills.....	166	38	43.5	237	31	274	34.5	337	34.5
Freeport.....	129	28.5	39	199	31	236	34.5	301	34.5
Rockland.....	194	38	46.5	264	31	301	34.5	366	34.5

From the above table it will be seen that the proposed rates exceed those in effect from Providence, Hartford, and Bridgeport. The rates from these latter points are unrestricted as to routing, and traffic may, and probably does, move through Boston to many destinations. The proposed adjustment would, therefore, result in numerous fourth section violations. It is also to be noted that the present adjustment likewise is apparently violative of the fourth section of the act. For example, the rate from Providence to Damariscotta Mills and Rockland is 31 cents, while the present rate from Boston to these points is 38 cents. This situation should be promptly corrected.

Respondents, while admitting that there is discrimination in the situation which should be corrected by canceling the commodity rates from the competing points, make light of the competition of the cities named and show that for a three months' period in 1920 the total less-than-carload tonnage of iron and steel castings, nails, and rods received at Augusta, Bangor, Bath, and Rockland, Me., was, from Boston, 70,000 pounds; Providence, 10,000; Bridgeport, 15,000; and Hartford, 500. The Portland tonnage is said to be "a good deal less than from Boston." Two Portland jobbers testified that their principal competition was with Boston and not with the three other cities named. In some cases the proposed rates from Boston are as high as those applicable from Philadelphia, 316 miles more distant, and higher than the New York rates. The class rate from Pittsburgh to Boston and Portland is 48.5 cents, the distances being 679 and 774 miles respectively. The present rate from Boston to Vanceboro, Me., a distance of 359 miles, is 45 cents and the proposed rate 55.5 cents. The rate from Pittsburgh to Brunswick, Me., 802 miles, is 58 cents; the proposed rate from Boston to Brunswick, 136 miles, is 40.5 cents.

We find that respondents have not justified the proposed schedules. This finding is without prejudice to any more comprehensive adjustment which may be proposed. An order will be entered requiring the cancellation of the suspended schedules and discontinuing this proceeding.

INVESTIGATION AND SUSPENSION DOCKET No. 1365.  
ROUTING ON COAL FROM WESTERN MARYLAND  
RAILWAY MINES TO EASTERN DESTINATIONS.

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*Submitted November 16, 1921. Decided January 16, 1922.*

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Proposed schedules by which the application of through rates on coal from certain mines on the Western Maryland Railway in connection with the Baltimore & Ohio Railroad to eastern destinations would be restricted to the route via Cumberland, Md., found not justified.

*Charles R. Webber* for respondent.

*George P. Bagby* and *James T. Carter* for protestant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

By schedules filed to become effective on July 22, 26, 27, and 28 and August 4, 1921, respectively, the application of joint rates on coal from certain mines on the Western Maryland in connection with the Baltimore & Ohio, hereinafter called respondent, to eastern destinations is proposed to be restricted to the route via Cumberland, Md., leaving in effect via Cherry Run, W. Va., combinations which are higher than the present joint rates applicable over that route. The schedules were filed by the Baltimore & Ohio for account of itself and the Western Maryland, but the latter is unwilling to join in the proposed restriction and a protest was filed on its behalf. The operation of the schedules was suspended until December 19, 1921, and their effective date has subsequently been voluntarily postponed by respondent until February 19, 1922.

The points of origin are located on protestant's Cumberland-Connellysville division, hereinafter called its new line, and three of its branches, namely, the Fairmont-Helen's Run and Fairmont-Bingamon, serving the Fairmont coal fields of West Virginia, and the Somerset Coal, serving the Somerset region of Pennsylvania, which branches are connected with the new line by means of trackage rights over the Baltimore & Ohio. The coal originating on the new line annually amounts to about 200,000 tons, and on the branches to about 1,150,000 tons. The traffic, hereinafter called new-line coal, moves to eastern destinations on protestant's own lines, including Baltimore, and to destinations on the Philadelphia & Reading, Cen-

tral Railroad of New Jersey, Lehigh Valley, Baltimore & Ohio, and connecting lines. New-line coal for Baltimore & Ohio delivery consists of from 4 to 10 cars per day, and it is not anticipated that it will exceed 20 cars per day. The new line was placed in operation in 1912, and the branches shortly prior to federal control. New-line coal commenced to move in substantial volume in January, 1918, and through rates applicable thereto were established by tariffs effective September 23, 1918. These tariffs are still in effect. No divisions or specific routing were provided in connection with the rates named therein, as the lines concerned were all under federal control. Cherry Run is about 65 miles nearer the points of destination than Cumberland.

Respondent contends that Cumberland is its established point of interchange for coal originating on protestant's Elkins-Cumberland division, being the only point via which divisions are in effect on that traffic; that throughout the period of federal control new-line coal moved via Cumberland, and that during March, April, and May, 1921, an average of only two cars of new-line coal per day moved via Cherry Run as compared with an average of five or six cars of Elkins division coal via Cumberland; and it urges that it is desirable that all this traffic move to the Baltimore & Ohio via the same gateway.

Prior to the establishment of the through rates on new-line coal the lowest combinations were in effect via Cumberland. Protestant asserts that during federal control there was no question of preserving the rights of the originating carrier; that, moreover, the new line and branches were operated by the Director General as a part of the Baltimore & Ohio system, and that since federal control new-line coal has been interchanged for the most part at Cherry Run.

Respondent states that it has a fully equipped yard and complete personnel at Cumberland and that its service is organized with a view to receiving coal shipments at that point. It has no classification facilities at Cherry Run, and contends that the Cherry Run yard was built solely for the purpose of effecting delivery of east-bound traffic to the Western Maryland. From Cherry Run respondent has a double track leading to Brunswick and Baltimore, Md., and a line on a lower grade leading to Cumbo, W. Va., where it connects with the Cumberland Valley Railroad. The Cherry Run yard is on the north of respondent's tracks and is connected with respondent's main-line tracks only by a crossover at the west end of the yard. Respondent states that it operates solid trains from Keyser, W. Va., and Cumberland to Cherry Run, Cumbo, and Brunswick, and a way train from Cherry Run to Brunswick; that the engines bringing in the Cherry Run trains move light to Cumbo;

that the engine bringing in the Brunswick train could handle the traffic here considered only by leaving its train on the eastbound main line, moving over the crossover, thence over the low-grade line to the east end of the yard, coupling onto the cars and moving back over the low-grade line and the crossover and again coupling onto its train; that it would be impracticable for the engine bringing in the Cumbo train or moving light to Cumbo to handle the traffic, for in the former case the train would block the low-grade line and also the eastbound and westbound main-line tracks, if the train exceeded 67 cars in length, and in either case the movement of the traffic through Cumbo would be very expensive; and that while a few loads of local freight are picked up at Cherry Run by the way train for delivery between Cherry Run and Brunswick, a similar handling of new-line coal would be uneconomical. It further states that it has about 87 trains moving through Cherry Run daily, or an average of one every 16.6 minutes, the greatest traffic density on its entire system; that Cherry Run marks the beginning of a heavy grade on its line for eastbound traffic; that up until about eight months prior to the hearing it filled out the tonnage of its eastbound trains with Western Maryland business which was set off at Cherry Run, but a check during October, 1920, showed that this caused an average of 45 hours delay per day to through trains, and that this head-end service is now confined to perishable shipments and other quick-dispatch freight and occasionally other shipments where on any particular date there are not sufficient cars to make up a train. On account of the operating conditions set forth above it feels that the acceptance of coal from the Western Maryland at Cherry Run seriously interferes with its operations, and accordingly on June 2, 1921, it issued an embargo and now seeks to close that gateway permanently to such traffic by means of tariff publication.

Protestant denies that Cumberland is an efficient point of interchange. It points out that new-line coal for interchange with respondent at Cumberland must move to protestant's Knobmount yard, a distance of 2.5 miles from the interchange, and return, which movement is mostly over protestant's main line; that the interchange track at Cumberland has a capacity of only 22 cars, is located on a sharp curve, and passes over a light-capacity bridge at Wineow street; that the track of the Western Maryland, approaching the interchange, also passes over light-capacity bridges over the Potomac River and the Chesapeake & Ohio Canal; that the Western Maryland track leading to the interchange and the Baltimore & Ohio track leading from the interchange are both on a heavy eastbound grade; that if more than 22 cars are placed at the interchange the track to the Western Maryland warehouse is blocked; that the placing of 42 or

more cars on the tracks at the interchange results in the blocking of the Western Maryland's main tracks; and that the strengthening of the bridges and the elimination of the curve at the interchange would alone require an expenditure of about \$200,000. It cites instances of delay to traffic moving through Cumberland averaging about 40 hours in periods of heavy business and ranging from 14.5 to 19 hours, excluding Sundays and holidays, in periods of light business. A representative of its car-service department testified that that department has had more inquiries, tracers, and dissatisfaction on the part of the public on account of delays in interchanging cars with respondent at Cumberland than on any other account. In 1918 an operating official of the Baltimore & Ohio system went so far as to suggest that Cumberland be abandoned as a general point of interchange. Respondent admits that the facilities at Cumberland are antiquated. It points out, however, that these conditions were known by protestant at the time it constructed its Knobmount yard and contends that with proper cooperation much of the delay at Cumberland could be avoided.

Protestant refers to an agreement of December 23, 1889, under which the Cherry Run yard was constructed, by which the two carriers bound themselves to "freely interchange business with each other" at Cherry Run. Each carrier further agreed to—

provide, or have provided, its due proportion of the facilities necessary for the interchange of business at the proposed point of junction, and should either party find it necessary or desirable to have established any facilities or accommodations contiguous to the tracks of the other at such points, which may not be intended for joint use, there shall be proper co-operation upon the part of the other party to enable it to do so, provided all such independent facilities of either party shall be provided by it without cost to the other, and, provided further, that the facilities authorized by this provision shall be only such reasonable facilities as may be necessary to accommodate the business of the Company providing them.

Protestant maintains a yard engine at Cherry Run and expresses a willingness to place cars, without charge, on such interchange track at that point as respondent may desire, and where necessary to perform classification service. It suggests that new-line coal might be moved to Cumbo or Brunswick where it could be readily classified, as respondent has extensive yards at both points. It points out that respondent picks up daily at Cherry Run an average of four cars of miscellaneous freight, including hard coal, and shows by an actual check that respondent still operates a head-end service into Cherry Run. In other words, respondent is now, as it has done in the past and as every railroad must do in order to serve the public and handle the freight from its connections, accommodating its methods of operation to the business needing to be moved. The

heavy grade at Cherry Run affords no insuperable obstacle to the receiving of new-line coal at that point, as in any event it would be offset by the preponderance of cars set off over those picked up. Protestant suggests that if the traffic assumed large proportions the respondent might, in line with the above agreement, construct a cross-over at the east end of Cherry Run yard at a cost of only about \$3,500; that by the construction of a wye at a cost of about \$13,500, respondent would be enabled to turn its engines and dispatch its trains in either direction over any other track in the Cherry Run yard; that this wye would also enable respondent to turn engines which move the solid trains to Cherry Run and, if desired, to operate a turn-around service between Cherry Run and Brunswick similar to that operated by protestant between Cherry Run and Hagerstown.

It is further stated by protestant that the car-service division of the American Railway Association held that the operating conditions at Cherry Run did not justify the closing of that gateway by means of an embargo, and that the embargo was subsequently removed pursuant to a temporary arrangement between the two carriers whereby the coal already at Cherry Run was to be accepted by respondent, but new-line coal thereafter moving until the determination of this case was to be interchanged at Cumberland, with the understanding that the divisions of the joint rates should abide the result of this case.

Respondent directs attention to the fact that no shipper appeared in opposition to the cancellation of the route via Cherry Run, and that even if the proposed schedules became effective the joint rates established by the Director General would continue to apply via Cumberland, and contends that the latter route is therefore not shown to be necessary or desirable in the public interest within the meaning of section 15 of the act, citing *Marble Rates from Vermont Points*, 29 I. C. C., 607, *The Ogden Gateway Case*, 35 I. C. C., 131, *Ocean-and-Rail Rates to Charlotte, N. C.*, 38 I. C. C., 405, and *West Coast Lumber Mfrs. Asso. v. S., P. & S. Ry. Co.*, 45 I. C. C., 230, to show that under such circumstances we have no authority to require the continuance of the route via Cherry Run. In the first case cited the route was canceled in order that the originating carrier might conserve the long haul, and we found that the cancellation was justified, as it did not appear that the public interest was in anywise jeopardized thereby. In *The Ogden Gateway Case* we permitted the Union Pacific to cancel its joint fares in connection with the Denver & Rio Grande, as it appeared that the former had a very much shorter route over its own rails between the points of origin and destination. In that case we laid down the principle that we have no power to prevent the cancellation of a through route if we could



not have required the establishment of the route as an original proposition. In *Ocean-and-Rail Rates to Charlotte, N. C.*, all of the participating carriers desired the discontinuance of the route proposed to be canceled, and as no shipper or community directly interested requested its maintenance we held, under the principle announced in *The Ogden Gateway Case*, that the cancellation should be allowed to stand. In *West Coast Lumber Mfrs. Asso. v. S., P. & S. Ry. Co.* defendant, the originating carrier, canceled its joint rates in connection with the Union Pacific. It appeared that there were available practicable through routes which embraced the entire length of defendant's line. There was no showing that the public interest would suffer from the cancellation of the Union Pacific route, and, again applying the principle announced in *The Ogden Gateway Case*, we held that such cancellation was justified. In the instant proceeding the proposed restriction in routing would operate to deprive the originating carrier of its long haul, and the schedules were filed against its express wishes. It is well settled that if a carrier has traffic in its possession it should be allowed to handle it by its own line as far as it can unless the public interest would suffer thereby.

We find that respondent has not justified the suspended schedules. An order will be entered requiring their cancellation and discontinuing this proceeding.

66 I. C. C.

No. 11746.

GAYNOR LUMBER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ET AL.

PORTIONS OF FOURTH SECTION APPLICATION NO. 349.

*Submitted March 9, 1921. Decided January 17, 1922.*

1. Rates on lumber, in carloads, from Weed and Westwood, Calif., and Klamath Falls, Oreg., to Jasper, Marshall, Waverly, Litchfield, and Pipestone, Minn., and Garretson, S. Dak., found unreasonable. Reparation awarded.
2. Fourth section relief denied.

*P. R. Wigton and J. P. Haynes* for complainant.*R. J. Hagman and F. G. Dorety* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

*HALL, Commissioner:*

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued. We have reached conclusions differing from those suggested by him.

Complainant is a corporation engaged in the wholesale lumber business at Sioux City, Iowa. By complaint filed August 28, 1920, it alleges that the rates charged on lumber, in carloads, shipped from Weed and Westwood, Calif., and Klamath Falls, Oreg., to Alvord, Iowa; Jasper, Marshall, Waverly, Litchfield, Pipestone, and Sauk Center, Minn.; and Garretson, S. Dak., between November 3, 1918, and December 12, 1919, were, and that the present rates are, unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section of the act to regulate commerce. At the hearing the shipments to Sauk Center were eliminated. We are asked to award reparation and to establish reasonable rates for the future. Rates will be stated in cents per 100 pounds and are those in effect when the shipments moved.

Rates on lumber from California and Oregon apply from grouped points of origin. Weed and Klamath Falls are in the coast group. Westwood is in the Truckee group on traffic moving via Ogden, Utah,

and in the coast group on traffic moving via El Paso, Tex. The rates hereinafter referred to will be those from the coast group and are 3 cents higher than from the Truckee group. The destinations to which the rates apply are also grouped. The latter are designated by the letters A to J, inclusive. Generally speaking, groups H, G, and F, which take a rate of 55 cents, extend easterly from the Colorado-Nebraska line to and including points on the Missouri River, and southerly from the South Dakota-Nebraska line to the Gulf of Mexico. Group F, the most easterly of these three groups, extends north of Sioux City, Iowa, to St. Paul and Minneapolis, Minn., hereinafter referred to as the twin cities, and to Duluth, Minn. It also includes points intermediate between the twin cities and Duluth and points on the Chicago, St. Paul, Minneapolis & Omaha intermediate between Sioux City and the twin cities. It does not extend to points on the Great Northern intermediate between Sioux City and the twin cities, except to Merrill, Iowa, 18 miles north of Sioux City, and intermediate points. The points intermediate between Merrill and the twin cities include the destinations here considered. Group E takes a rate of 60 cents and extends easterly from group F to and including points on the Mississippi River, and north thereof to points in western Wisconsin. It includes points on the Great Northern in Iowa north of Merrill. The group-D rate is 65 cents. Generally speaking, it applies to points east of group E and west of Lake Michigan and the Indiana-Illinois line.

In the tariff publishing the group rates the destinations are listed separately by states. The intermediate clause, when published, follows the list of destinations in a particular state. The effect is to limit the application of that clause to points intermediate between two points which are in the same state and named in the tariff. Its publication in this manner was intentional. The destinations here considered, except Alvord, were not named in the tariff and are not intermediate between two named points in the same state. They are intermediate between Merrill, Iowa, and the twin cities, which were named as taking group-F rates.

The shipments moved over lines under federal control. That to Pipestone was from the Truckee group and all others from the coast group. Charges are said to have been collected at a combination rate of 55 cents on the former and at combinations ranging from 60 to 75 cents on the others. The group-E rate was applicable to Alvord. The combinations applicable to the other destinations were composed of group-F rates to Merrill or Minneapolis or the group-E rate to Lester, Iowa, and local specific or distance lumber rates beyond. It appears that some of the shipments were undercharged and others overcharged.

Complainant compares the rates assailed with the group-F rate for greater distances to the twin cities and Duluth, and points intermediate, and contends that the destination here considered, being on the main line of the Great Northern from Sioux City to the twin cities, are likewise entitled to that rate. Comparison is also made with the group-E and group-D rates, and with the rates on other commodities and on classes from the coast group to this destination territory. The application of the latter rates to intermediate points is not restricted but the grouping is somewhat different from that under the lumber rates. The destinations here considered generally take group-E rates on other commodities and on the classes from south Pacific coast points.

Rates on lumber from California to this territory are made with relation to the group rates from the north Pacific coast and the inland empire which are free from intermediate restrictions. The north coast group rate to the twin cities is 50 cents and applies as far west as the Minnesota-Dakota line and as far south as Garretson on the line of the Great Northern extending to Sioux City.

Complainant contends that unlawful discrimination against the destinations named in the complaint resulted from the application of group-F rates to the twin cities and Duluth, and points intermediate. Defendant Great Northern insists that it participated in the tariff only because of its general policy to maintain rates to the twin cities and Duluth on the same basis as those of other lines; that it has no divisional arrangements on such traffic; that in serving the destinations named in the complaint it has no competition and is not required to establish the lower rates to retain the business; that the rates to the twin cities and Duluth are merely paper rates; and that it does not desire to participate in the traffic because it has its own line from the north Pacific coast to this territory.

In *Lumber Rates from Pacific Coast*, 63 I. C. C., 125, decided since this case was submitted, we found that the proposed withdrawal of the Chicago, St. Paul, Minneapolis & Omaha and the Great Northern from participation in joint rates on lumber, in carloads, from points in California and Oregon to points in Minnesota, including the twin cities and Duluth, and in other adjacent states, was not justified, because such withdrawal would result in the application of higher combination rates which would be relatively unreasonable; and denied relief under the fourth section as to intermediate points. Effective December 1, 1921, the carriers established group-F rates to the destinations here considered, except possibly Garretson which should be listed with the South Dakota destinations if the tariff is to clearly show that the group-F rate applies thereto.

In *Transcontinental Rates from Group F*, 28 I. C. C., 1, we found with respect to class rates to and from the south Pacific coast ter-

minals that the carriers had justified their proposal to exclude the twin cities and Duluth from group F, which then extended from Kansas City to Duluth, and to apply the Mississippi River, or group-E, rates to the twin cities, and the Chicago, or group-D, rates to Duluth. We there said:

We know no reason why Duluth should have better rates than Chicago to and from the territory in question, or why the twin cities should have better rates than the upper Mississippi River crossings.

With this case there were assigned for hearing those portions of fourth section application No. 349, filed by R. H. Countiss, agent, by which the carriers named as parties thereto ask authority to continue to charge rates for the transportation of lumber, in carloads, from points of origin on the line of the Southern Pacific in California and Oregon to Sioux City, Iowa, St. Paul and Duluth, Minn., and Superior, Wis., lower than the rates maintained on like traffic to Alvord, Iowa, Jasper, Minn., and other intermediate points. No evidence in support thereof was introduced other than that above summarized.

We find that the rates assailed, except those applicable on shipments to Sauk Center and Alvord, were unreasonable to the extent that they exceeded the group-E rates of 57 cents from the Truckee group and 60 cents from the coast group; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. Any overcharges on shipments to Alvord should be refunded promptly, with interest.

The portions of the fourth section application here considered will be denied. No other order for the future is necessary. Defendants will be expected, however, to correct their tariff by listing Garretson with the South Dakota destinations taking group rates.

No. 11286.

COSDEN & COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, MIDLAND VALLEY  
RAILROAD COMPANY, ET AL.

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*Submitted April 23, 1921. Decided December 10, 1921.*

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Rates on petroleum products and other commodities, in carloads and less than carloads, between Shamrock, Okla., and certain other points in Oklahoma, during federal control, found unreasonable. Reparation awarded.

*Clifford Thorne and W. R. Scott* for complainants.

*M. G. Roberts* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are Cosden & Company and a subsidiary, the Cosden Oil & Gas Company, corporations producing and refining petroleum, with offices at Tulsa, Okla. By complaint filed February 28, 1920, as amended, they allege that the rates charged by defendants for the intrastate transportation of numerous carload and less-than-carload shipments of petroleum products and other commodities between Shamrock and other points in Oklahoma during the period from January 1, 1918, to November 29, 1919, were illegal and unreasonable. The prayer is for reparation. Rates will be stated in cents per 100 pounds.

Shamrock is the northern terminus of the Sapulpa & Oil Field, hereinafter called the Oil Field, which was originally independently owned and operated. It is about 9 miles in length, and connects with the St. Louis-San Francisco, hereinafter called the Frisco, at Depew, Okla., about 43 miles southwest of Tulsa.

Most of the shipments upon which reparation is claimed consisted of gasoline, naphtha, lubricating oil, and other petroleum distillates, in carloads, which moved between Shamrock and Tulsa over the Oil Field and Frisco. Other carload shipments consisted of drilling machinery from Haskell and gas engines from Leonard which moved to Shamrock over the Midland Valley, Frisco, and Oil Field; crushed stone from Garnett to Shamrock over the Frisco

and Oil Field; oil-well supplies from Shamrock to Tulsa over the Oil Field and Frisco; and iron pipe from Shamrock to Quay over the Oil Field, Frisco, and Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, and to Tulsa, Bristow, and Covington over the Oil Field and Frisco. The less-than-carload shipments, of which there were comparatively few, consisted of miscellaneous commodities moving over the Oil Field and Frisco.

The rates charged were those published in single-line distance scales applicable between points in Oklahoma, plus arbitraries for hauls over two or more lines not under the same management and control and, at times, certain special arbitraries of the Oil Field.

The rate on gasoline, naphtha, lubricating oil, and other petroleum distillates between Shamrock and Tulsa is illustrative of the general situation. Prior to March 25, 1918, the rate was 14.4 cents, made up of a single-line distance commodity rate of 9.4 cents, applicable to hauls of 52 miles, plus a two-line arbitrary of 4 cents and the Oil Field arbitrary of 1 cent. On that date, following a decision of the United States district court, which held that the Oklahoma intrastate scale was confiscatory and permanently enjoined its application, the single-line scale was increased and the 9.4-cent rate became 10.5 cents, making the rate between Shamrock and Tulsa 15.5 cents. On June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads, the total rate was increased by 25 per cent to 19.5 cents. Effective August 24, 1918, the single-line rate was increased to 15 cents and the Oil Field arbitraries were canceled, making the total rate 19 cents, constructed by adding to the single-line rate a 4-cent arbitrary for a two-line movement. On November 29, 1919, the joint-line arbitrary was canceled, and the rate became 15 cents.

The Frisco had purchased the Oil Field on or about July 1, 1917, with the approval of the Corporation Commission of Oklahoma, and during the period covered by this complaint these two roads were under the same management and control. Shortly after July 1, 1917, upon application of the Frisco, the Oklahoma commission permitted the continuation of the then applicable rates.

Complainants contend that, following the acquisition of the Oil Field by the Frisco, there was no authority under the published tariffs for application of two-line arbitraries on traffic interchanged between the Oil Field and the Frisco and three-line arbitraries on traffic handled jointly by those lines and other carriers defendant; and that the rates applicable were the single-line rates on traffic interchanged between the Oil Field and the Frisco and the single-line rates plus the two-line arbitraries on traffic interchanged between those lines and the other carriers defendant.

Both the Frisco and the Oil Field were named as parties to the applicable tariffs. The tariff in effect prior to March 25, 1918, in an item governing the application of the joint-line arbitraries, provided that the single-line rates were to be applied on shipments moving over one line of railroad or over two or more lines of railroad either directly or indirectly under the same management and control and published three sets of arbitraries to be added to the single-line distance rates, the first to apply on shipments moving over two lines, the second over three lines, and the third over four or more lines of railroad not under the same management and control either directly or indirectly. Neither the names of carriers under the same management and control nor reference to other items of the tariff which contained them was included in the item naming the arbitraries. Such reference to items of the tariff in which appeared the names of carriers under common management and control was specifically made in the item containing the single-line rates, and it appears that the names of two such carriers added to the tariff by supplement are the only ones not so referred to. The tariffs in effect on and after March 25, 1918, published, as a part of the item providing for the application of the single-line distance rates, the names of carriers that were under the same management and control, and effective November 29, 1919, by amendment of that item, included the names of the Oil Field and Frisco.

Complainants maintain that the relationship between carriers parties to the tariff is a question of fact to be ascertained from sources outside the tariff; and that investigation having established that the carriers in question were under the same management and control during the period here considered, the joint-line arbitraries on traffic interchanged between them were not applicable. The tariffs having designated carriers which would be considered as under common management and control, and the Oil Field and Frisco not having been so designated during the period covered by the complaint, we find that the joint-line arbitraries were applicable to traffic interchanged between them during that period.

Complainants contend that, irrespective of the construction placed upon the tariffs, the rates assailed were unreasonable to the extent that they exceeded the contemporaneously applicable single-line rates on traffic between points on the Oil Field and Frisco and the single-line rates plus the two-line arbitraries on traffic handled jointly by the Oil Field and Frisco with either of the other two carriers named as defendants.

The Oil Field was built primarily to handle traffic created by the production of oil along its line. Complainants refer to a number of branch lines in Oklahoma that were built for the same purpose



but were not allowed any arbitraries in addition to the main-line rates. They refer in particular to the branch of the Santa Fe between Drumright and Cushing, 14 miles, which originally was an independent line. Drumright is about 5 miles north of Shamrock. The single-line rates applied between points on this branch and points on the main line of the Santa Fe during the period covered by this complaint. Complainants contrast the rate of 14.5 cents in effect between March 25 and June 25, 1918, on petroleum products from Drumright to Tulsa, 53.5 miles, over the Santa Fe to Jennings and the Frisco beyond, a two-line haul, with the rate of 15.5 cents charged from Shamrock to Tulsa, 52 miles. The contemporaneous class rates between Shamrock and Tulsa exceeded those between Drumright and Tulsa in amounts ranging from 5 cents on fifth class to 10 cents on classes 1, 2, and 3, and these differences were widened following the 25 per cent increase under general order No. 28.

In the following table, compiled from complainants' exhibits, comparison is made of the rates applied between March 25 and June 24, 1918, from Shamrock to Tulsa with contemporaneous rates from and to points on certain branch lines of the Frisco in Oklahoma:

From—	To—	Distance.	Classes.										Gasoline and freight.
			1	2	3	4	5	A	B	C	D	E	
		Miles.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Shamrock.....	Tulsa.....	52	61	54	46	38.5	30	31	26	23	20	16.5	15.5
Muskogee.....	Beggs.....	50.3	43	37	30	26	21	22	17	15	13	11	10.5
Blackwell.....	Jonah.....	52.7	43	37	30	26	21	22	17	15	13	11	10.5
Claremore.....	Gaswell...	52.3	43	37	30	26	21	22	17	15	13	11	10.5

Complainants maintain that there was no justification for allowing the Oil Field any special arbitraries, and in support of this contention compare, for the year ended December 31, 1916, the net revenues of the Oil Field with those of a number of other carriers in the same territory, including the following, which received special arbitraries:

Road.	Average mileage of road operated.	Railway operating revenue.		Net revenue.	
		Amount.	Per mile of road.	Amount.	Per mile of road.
Clinton & Oklahoma Western Railroad.....	53.13	\$170,794	\$3,215	\$74,272	\$1,398
Oklahoma, New Mexico & Pacific Railway.....	30.00	376,113	12,537	244,802	8,161
Texas, Oklahoma & Eastern Railroad.....	24.08	206,062	8,557	110,011	4,568
Sapulpa & Oil Field.....	8.98	296,389	33,005	239,866	26,711

It is not clear what is meant by "net revenue." The net railway operating incomes of the roads named for that year were, respectively \$58,533, \$189,349, \$108,165, and \$219,982.

The record shows that the Oil Field was incorporated September 25, 1915, and that the total amount invested in road and equipment as of December 31, 1916, was \$167,584.23. The purchase price paid by the Frisco for the Oil Field was approximately \$172,000. The net railway operating income for 1918 was \$115,641.03, or about 67 per cent of that purchase price, and for 1919, \$104,527.22, or about 60 per cent of that purchase price.

Exhibits were introduced to show that the single-line distance rates applicable in Oklahoma were reasonable in comparison with intrastate and interstate rates for equal distances between points in the same general territory and in other territories. For example, the single-line rates between Tulsa and Shamrock for the first five classes from March 25 to November 18, 1918, were higher than those contemporaneously applicable for an equal distance under the Shreveport-Texas, Memphis-Southwestern class, Missouri River-Nebraska, and the Kansas-Oklahoma standard scales. From November 18, 1918, to November 29, 1919, the rates for those classes were somewhat less than under the first two scales mentioned, the same as the Kansas-Oklahoma, and higher than the Missouri River-Nebraska and the Kansas-Missouri scales. The single-line rate of 15 cents on petroleum products in effect on and after August 24, 1918, from Shamrock to Tulsa, 52 miles, is compared with contemporaneous rates on the same commodities, including rates of 15.5 cents from Tulsa to Cherryvale, Kans., 100 miles; 14.5 cents from Florence, Colo., to Eden, Colo., 42 miles; 15 cents from St. Louis, Mo., to Paducah, Ky., 177 miles; 13.5 cents for a distance of 55 miles between stations in Louisiana; and 13.5 cents from Wood River, Ill., to Silica, Mo., 55 miles.

Defendants' evidence is addressed principally to the application of the two-line basis of rates on traffic between points on the Oil Field and points on the Frisco. They stress particularly the fact that upon the acquisition of the Oil Field by the Frisco the Oklahoma commission approved the continuation of the basis of rates originally authorized for application on traffic between the two lines, and that the order granting that approval was never modified. They urge that the arbitraries were necessary to enable them to continue the service rendered over the Oil Field at the time that road was purchased by the Frisco, and assert that the service which they originally provided was reduced when the arbitraries were canceled.

We find that during the period from March 25, 1918, to November 29, 1919, the applicable rates on traffic interchanged between the Oil Field and Frisco were unreasonable to the extent that they exceeded the single-line distance rates contemporaneously applicable in Oklahoma, and that the applicable rates on traffic that moved

over those lines and the lines of other carriers defendant were unreasonable to the extent that they exceeded the single-line rates plus the two-line arbitraries; that reasonable rates for the period from January 1 to March 24, 1918, would have been those above found reasonable as of March 25, 1918; that complainants made the shipments described and paid and bore the charges thereon, and were damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation. Complainants should comply with rule V of the Rules of Practice.

No. 12213.  
SULLIVAN LUMBER COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted July 30, 1921. Decided January 17, 1922.*

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Charges on a carload of lumber from Timber, Oreg., to Cochise, Ariz., reconsigned to Globe, Ariz., found not unreasonable or otherwise unlawful. Complaint dismissed.

*L. W. O'Rourke* for complainant.

*Ben C. Dey* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the lumber business at Portland, Oreg. By complaint filed February 7, 1921, it alleges that the charges collected by defendant on a carload of lumber from Timber, Oreg., to Cochise, Ariz., reconsigned to Globe, Ariz., were unjust, unreasonable, and not in accordance with the governing tariff. Reparation is sought. Rates will be stated in cents per 100 pounds.

Complainant made the shipment October 20, 1919, consigned to itself at Cochise. The following day it presented the bill of lading to defendant's agent at Portland with request that the billing be changed so as to consign the shipment to shipper's order at Cochise, notify H. W. Hamilton Company, which was done. While the shipment was en route to Cochise complainant made request for diversion at three different times, but in no instance did the defendant receive the request in time to accomplish diversion. The shipment arrived at Cochise November 12, 1919, and was placed upon the public team track, the only place of delivery for carload shipments at that point. The lumber was refused by the Hamilton Company, and on November 21, 1919, at complainant's request, the shipment was forwarded to Globe billed to complainant's order, notify Whalley Lumber Company. Charges were assessed at local rates of 60 cents from Timber to Cochise and 50 cents Cochise to Globe. Demurrage and certain other charges which are not attacked were also assessed.

The applicable tariff provided that one diversion might be made prior to delivery at the through rate plus the charge for reconsignment. Complainant contends that inasmuch as the bill of lading was not surrendered to defendant at Cochise there was no delivery at that point, and that it was, therefore, entitled to divert the shipment from Cochise to Globe at the through rate of 80 cents in effect from Timber to Globe, plus a reconsigning charge of \$5. The tariff also provided that if a car were placed for unloading at original destination and reforwarded therefrom without being unloaded it would be subject to the rates applicable to and from the point of reconsignment, plus a reconsignment charge of \$5 per car, with the exception that in no case would the total charge be less than the charges based on the through rate, plus the reconsignment charge.

The fact that this was an order-notify shipment did not preclude defendant from placing the car on the public team track for unloading prior to the surrender of the bill of lading in the absence of shipper's instructions to the contrary. When the car was thereafter forwarded at complainant's request the local rate from Cochise to Globe was lawfully applicable in combination with the rate from Timber to Cochise.

We find that the charges assessed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1403.  
RAILROAD SPACE RENTAL CHARGES ON COMPRESSED  
AND UNCOMPRESSED COTTON AT LOUISIANA PORTS.

*Submitted December 2, 1921. Decided January 10, 1922.*

Proposed increased "space rental" charges on domestic, export, and coastwise shipments of cotton and cotton linters at New Orleans, La., and subports, found not justified. Suspended schedules ordered canceled.

*A. P. Humburg, C. J. Rixey, jr., F. H. Wood, H. G. Herbel, and W. A. Northcutt* for respondents.

*Carl Giessow, Edgar Moulton, and H. Y. Taylor* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.  
BY DIVISION 3:

By schedules filed to become effective September 25, 1921, respondents propose to establish increased "space rental" charges on domestic, export, and coastwise shipments of cotton and cotton linters at New Orleans, La., and subports. Upon protest of the New Orleans Joint Traffic Bureau, in behalf of the Board of Commissioners of the Port of New Orleans, the New Orleans Cotton Exchange, and various other commercial and civic organizations of that city, the proposed increases were suspended until February 22, 1922.

The following table shows the present and proposed charges:

Period.	Rates per bale.		Period.	Rates per bale.	
	Present.	Proposed. <sup>1</sup>		Present.	Proposed. <sup>1</sup>
<i>On uncompressed cotton and uncompressed cotton linters.</i>			<i>On compressed cotton and compressed cotton linters.</i>		
Charges after expiration of free time— <sup>2</sup>	<i>Cents.</i>	<i>Cents.</i>	Charges after expiration of free time— <sup>2</sup>	<i>Cents.</i>	<i>Cents.</i>
For 4 days and under.....	5	7	For 2 days and under.....	5	7
For 8 days and over 4 days...	10	13.5	For 6 days and over 2 days...	10	13.5
For 13 days and over 8 days...	20	27	For 11 days and over 6 days...	20	27
For 18 days and over 13 days...	25	34	For 16 days and over 11 days...	25	34
For 28 days and over 18 days...	30	40.5	For 26 days and over 16 days...	30	40.5
After 28 days, additional, per day.....	1	1.5	After 26 days, additional, per day.....	1	1.5

<sup>1</sup> The increase proposed is 35 per cent, observing the usual method of disposing of fractions.

<sup>2</sup> Free-time allowance, 2 days.

<sup>3</sup> Free-time allowance: On domestic shipments, 4 days; on export and coastwise shipments, 7 days, except when moving on through export bills of lading, when allowance is 10 days.

The schedules are published in a tariff of "Joint Demurrage, Storage and Handling Charges," which names storage charges at the ports referred to on commodities generally, though the charges here under suspension for holding on carriers' premises shipments of cotton are named in connection with special rules carried in other portions of the tariff. As indicated in the above table, these rules pertain to cotton and cotton linters uncompressed, on the one hand, and compressed on the other. The rules applicable to uncompressed cotton and cotton linters provide that "storage" during certain free time will be allowed without charge, but the rules applicable to compressed cotton and cotton linters do not specifically designate the free-time allowance as an allowance for "storage." The rules in each instance designate the charges which accrue after the expiration of free time as "space rental" charges and provide that these charges are not for warehousing purposes.

In *Increased Rates, 1920*, 58 I. C. C., 220, we authorized increases of 35 and 25 per cent in rates of carriers in the western and southern groups, respectively. As to special services, we said:

No substantial reasons have been developed for exempting charges for switching from the general increases. It is our opinion that the charges for this service should be increased, together with the charges for transit, weighing, diversion, reconsignment, lighterage, floatage, storage (not including track storage), and transfer where the carriers provide separate charges against shippers for such service. The charges for other special services are not to be subject to the general increases herein authorized. The percentage to apply should be determined by the percentage applicable in the group where the service is performed, except that at points on the boundary line between two groups taking different percentages the higher percentage should apply.

Respondents' witness testified that, after this decision—

The question came up as to whether the space rental charges on cotton should properly be increased, and it was decided at that time to temporarily waive the increase until an investigation of the old records might be made to determine exactly what was meant by that term. That investigation developed that the so-called space rental charges were, in reality, nothing more nor less than storage, and it was, therefore, decided to increase these charges 35 per cent, the measure of increase authorized by Ex Parte No. 74 at New Orleans, which is located on the boundary line between the western territory and the southern territory.

The evidence also shows that the term "space rental" had its origin in the fact that some years ago cotton was stored by the carriers "in the open," protected by tarpaulins, but that modern fireproof structures are now provided, and, except under unusual conditions, it is now stored in warehouses or on covered platforms. The transportation of cotton and cotton linters is largely under any-quantity rates, and delivery is incident thereto.

Respondents say that, if possession is promptly taken, delivery is made on unloading platforms, but that cotton at times remains in the warehouse for months, and storage necessitates not only the providing of extensive facilities but also various other services, and, in particular, trucking within the warehouse and the keeping of additional records. It is urged that the charges in question include these various services, have at all times been considered by the carriers as imposed for storage, are so carried in their records and billing, and that the language of the tariff is inaccurate. They direct attention to the marked increase in cost of maintaining and operating their facilities and show that the present charges have been maintained for many years without change other than certain modifications as to free time.

It is not contradicted that the service performed by respondents during the period of free time is the same as that performed after its expiration. We are of opinion that the charges assailed are, in fact, charges for storage. The ambiguities in the tariffs giving color to a distinction between charges for "storage" and charges for "space rental" should be eliminated.

Our report in *Increased Rates, 1920, supra*, did not authorize increased charges for track storage; and since the schedules under suspension provide that "cotton and cotton linters will be allowed to remain in the yards or on the premises of these railroads," we think there is doubt whether the respondents would have been at any time entitled to the benefit of the increases authorized in that case. But if the authority ever existed, this would not in itself justify, at the present time, the increased charges proposed. *Switching Charges to and from South Tacoma*, 61 I. C. C. 128. The burden is upon respondents to justify the proposed increased charges.

In further justification of these schedules, respondents seek to show that the general level of charges of the New Orleans Public Cotton Warehouse, operated as an agency of the state of Louisiana, and of the "New Orleans Cotton Presses," consisting of private warehouses, and also referred to in the record as "city presses," is higher than the level of the carriers' charges for similar services. These comparisons are so published in connection or in combination with other services as to make any comparisons with a separate schedule of storage charges inconclusive.

According to respondents the charges at Galveston and other Texas ports, corresponding to charges here under consideration, are published as applicable to storage. On export and coastwise shipments they were increased, effective August 26, 1920, and with minor exceptions are the same as those proposed on export and coastwise



traffic at New Orleans. On domestic shipments at Texas ports, and also at Mobile, Ala., they are materially higher than here proposed. It is testified that the service rendered at Galveston is practically identical with that performed at New Orleans, but the witness offering this testimony had no personal knowledge of the situation at Galveston.

Protestant is chiefly interested in the matter of the charges on export and coastwise shipments, and while New Orleans is in competition with Texas ports on this traffic, its competition is chiefly with the south Atlantic and eastern Gulf ports. Contrasted with the charges cited at Texas ports on export and coastwise traffic, it appears that at Gulfport, Miss., no storage charge is made on export cotton and free time of 10 days is allowed on coastwise cotton; also that at south Atlantic and Gulf ports from Norfolk, Va., to and including Mobile, the storage charge on export cotton is 1 cent per bale "per day or fractional part thereof after the first 10 days without deduction for Sundays or legal holidays."

Protestant also points to reductions in wages since our report in *Increased Rates, 1920, supra*, and to recent reductions in storage charges at other New Orleans warehouses. Asserting that the exaction of a storage charge by a carrier is in the nature of a penalty to compel the prompt removal of merchandise, protestant contends that it is not shown that the present charges on cotton do not already accomplish that purpose.

Exhibits of record also show respondents' storage charges at New Orleans on all other commodities handled in export, import, coastwise, and domestic traffic, with certain exceptions. While the insurance rates are higher on cotton than on such other freight, the exhibits disclose that with the exception of sisal, which is said to be highly inflammable, and with the further exception of unmanufactured tobacco, as to which the charges for certain periods are lower and for other periods are higher than the present or proposed charges, the general level of the charges on all commodities shown as handled in export, import, or coastwise traffic is not only lower than the level of the proposed charges, but is lower than the level of the present charges on export shipments of cotton at New Orleans; that with the exception of a charge covering freight generally, but which is restricted to apply in the absence of standing orders to the carriers to store and which apparently is seldom applied, the level of the charges on all commodities handled in domestic traffic is materially lower than the level of the charges proposed, and in many instances is lower than the level of the present charges on domestic shipments of cotton at New Orleans.

A charge, reasonable in its inception many years ago, may become unreasonably low in consequence of the construction of more adequate facilities, or a change in the character of the service rendered, in this case from outside to inside storage, the increased level of operating costs generally, or one or more of these factors. But even if this be so, the existence of such general conditions alone affords no proper basis upon which to test the reasonableness of a specific material increase in charges, and the present record affords no foundation upon which to justify the substantial increase asked.

We find that respondents have not justified the proposed schedules. An order will be entered requiring their cancellation and discontinuing this proceeding.

66 I. C. C.

No. 11693.

FLANLEY GRAIN COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted March 10, 1921. Decided November 25, 1921.*

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Rates on corn and oats, in carloads, from points in Iowa and South Dakota to points in North Dakota found unreasonable. Reparation awarded.

*P. R. Wigton and J. P. Haynes* for complainants.

*R. J. Hagman, John F. Finerty, and Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3. COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner and the case was orally argued.

Complainants are the Flanley Grain Company and the Quinn-Sheperdson Company, corporations dealing in grain at Sioux City, Iowa. They allege by complaint filed August 11, 1920, that the rates charged on 31 carloads of corn and oats shipped between July 23, 1918, and September 19, 1919, from points in Iowa and South Dakota to destinations in North Dakota were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act to regulate commerce. The prayer is for reparation only. The claim of the Quinn-Sheperdson Company was withdrawn at the hearing. Rates will be stated in cents per 100 pounds.

The points of origin are in northern and northwestern Iowa and southeastern South Dakota. The destinations are in northwestern North Dakota. The shipments moved over the Great Northern, hereinafter called defendant.

For a number of years prior to June 25, 1918, defendant maintained specific commodity rates on corn and oats from and to the points concerned. Effective on the latter date, pursuant to general

66 I. C. C.

order No. 28 of the Director General, the following tariff provision was established applicable over defendant's lines:

Interstate commodity rates on the following articles, in carloads, shall be increased by the amounts set opposite each:

Grain: Wheat, 25 per cent, but not exceeding an increase of 6 cents per 100 pounds.

Other grain: New wheat rates.

Prior to June 25, 1918, no specific commodity rates on wheat had been in effect from and to these points. Distance commodity rates or combination commodity rates, whichever were the lower, had been applicable. These rates were considerably in excess of the rates on corn and oats. Under the tariff provisions quoted, these distance or combination rates on wheat, increased as therein provided, became applicable on corn and oats. The rates charged complainant varied from 32 to 41.5 cents for distances which, with one exception, ranged from 527 to 711 miles. Some of the shipments were overcharged in amounts ranging from 0.5 to 5 cents per 100 pounds and others undercharged in amounts ranging from 1 to 2.5 cents per 100 pounds. Charges should be adjusted to the basis of the applicable rates. On October 31, 1919, rates on corn and oats were established based on the rates in effect June 24, 1918, plus a 25 per cent increase not exceeding 6 cents.

For a number of years prior to June 25, 1918, defendant had maintained the same level of rates from and to the points here considered as that of the Chicago, Milwaukee & St. Paul and the Northern Pacific from and to the same general territories. The corn and oats rates from points on the Chicago, Milwaukee & St. Paul were increased on that date by 25 per cent, with a maximum of 6 cents, without reference to the wheat rates. This lack of uniformity in applying general order No. 28 disturbed the level of rates which had existed for a number of years. On October 31, 1919, the rate parity was restored. Comparison of the rates complained of with the rates to points in Montana directly across the North Dakota state line shows that the latter rates remained on the same general level during and after the period that complainant's shipments moved under practically the same transportation conditions as existed to the North Dakota destination territory.

The basis of rates applying from Minneapolis to the North Dakota destination territory, which bore a general relation to the rates from the origin territory prior to general order No. 28, was not disturbed by that order. This was due to the fact that specific commodity rates on wheat were established from Minneapolis. Complainant testified that there were no changes of circumstances or conditions during the period from June 25, 1918, to October 31, 1919, which justified a

different basis of rates in the territory in question than existed prior to June 25.

No evidence was offered by defendant.

It appears that there were departures from the long-and-short-haul provision of the fourth section, in that higher rates were charged to points directly intermediate to Snowden, Mont., than to Snowden. These departures were protected by an appropriate fourth section order.

We find that the rates assailed were unreasonable to the extent that they exceeded the rates in effect prior to June 25, 1918, plus an increase of 25 per cent, with a maximum of 6 cents; that complainant Flanley Grain Company made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount that the charges paid exceeded those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. This complainant should file a statement in accordance with rule V of the Rules of Practice. In this statement any overcharges or undercharges should be taken into consideration.

HALL, *Commissioner*, dissenting:

The applicable rates, with but one exception, yielded ton-mile earnings ranging from 10.4 to 13 mills. They were not unreasonably high under the circumstances, including the necessity certified to in general order No. 28. There is no basis for a finding that they were otherwise unlawful. The complaint should be dismissed.

66 I. C. C.

No. 11804.  
TUFFLI BROS. PIG IRON & COKE COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted August 1, 1921. Decided January 17, 1922.*

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Rates charged on carloads of smithing coal from Douglas, W. Va., to destinations in Iowa, Nebraska, and Wisconsin, and of coke from Jamison, Pa., to destinations in Iowa and Wyoming, found not unreasonable. Complaint dismissed.

*J. Scheele* for complainant.

*Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, is a broker of smithing coal and coke with offices at St. Louis, Mo. It alleges that the rates charged on numerous carloads of smithing coal and coke shipped between June 25, 1918, and February 29, 1920, from the Douglas, W. Va., and the Pennsylvania fields to destinations on the Chicago, Burlington & Quincy were unjust and unreasonable. Reparation only is sought. Rates will be stated in amounts per ton of 2,000 pounds.

Complainant's evidence is restricted to 12 shipments of smithing coal from Douglas, W. Va., to Burlington, Clarinda, and Red Oak, Iowa, Broken Bow, Nebr., and La Crosse, Wis., and 5 shipments of coke from Jamison, Pa., to Oskaloosa, Iowa, and Sheridan, Wyo.

The rates charged and applicable were combination rates, those to Burlington basing on Peoria, Ill., and those to the other destinations on Chicago, Ill. Effective June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads, each factor of the combination rates was increased a specific amount, the increases varying with the amount of the rate and ranging from 70 to 87.2 cents on coal, and from \$1.25 to \$1.403 on coke. On July 2, 1918, by freight rate authority No. 10, the Director General directed that, with certain exceptions not pertinent here, increases were to be applied to the aggregates of combination rates instead of to each

factor. The application of such a rule would have resulted in increases less than those effected. None of the participating carriers observed these instructions by amending their tariffs. Subsequently the Director General canceled the freight rate authority.

Complainant relies solely upon the failure of the carriers to amend their tariffs to comply with this freight rate authority, contending that the rates assailed were unreasonable to the extent that they exceeded the rates in effect prior to June 25, 1918, increased by 50 cents on smithing coal and 75 cents on coke, the increases that would have resulted if the directions of the freight rate authority had been observed. Rates on coal and coke from the territory east of Chicago and Peoria to destinations west of these gateways are generally made on combination. No testimony was offered to show that the rates assailed were unreasonable *per se*. They may not be condemned upon the mere showing that the carriers failed to comply with instructions issued by the Director General.

Upon this record we find that the rates assailed were not unreasonable. The complaint will be dismissed.

66 I. C. C.

No. 11412.

JERPE COMMISSION COMPANY, INCORPORATED,  
v.  
DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLING-  
TON & QUINCY RAILROAD COMPANY, ET AL.

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*Submitted March 10, 1921. Decided January 17, 1922.*

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Rates on rabbits, not dressed, in carloads, from points in Kansas and Nebraska to Chicago, Ill., Detroit, Mich., Philadelphia, Pa., and New York, N. Y., found unreasonable. Reparation awarded.

*C. E. Childe* for complainant.

*L. H. Strasser, Henry G. Herbel, James M. Chaney, Alexander M. Bull,* and *J. C. La Coste* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation with offices at Omaha, Nebr., is engaged in the purchase, sale, and distribution of butter, eggs, poultry, game, and other perishable commodities. By complaint filed April 19, 1920, it alleges that the rates charged by defendants for the transportation in December, 1918, and January, 1919, of 18 carloads of rabbits, not dressed, from Norton, St. Francis, and Oberlin, Kans., and Alma, Nebr., on the Chicago, Burlington & Quincy, hereinafter called the Burlington; from Norton, Rexford, and Brewster, Kans., on the Chicago, Rock Island & Pacific, hereinafter called the Rock Island; and from Stockton, Lenora, and Concordia, Kans., on the Missouri Pacific, to Chicago, Ill., Detroit, Mich., Philadelphia, Pa., and New York, N. Y., were unreasonable and unduly prejudicial. We are asked to award reparation and to establish reasonable and non-prejudicial rates for the future. Rates are stated in cents per 100 pounds and do not include the increases of 1920.

The points of origin are in western or northern Kansas except Alma, which is in southwestern Nebraska. Wild jack rabbits and cottontails are very numerous in this section and are a menace to the farmers and orchardists. Each year in the early winter drives are organized to slaughter them. They have some food value and can be sold in competition with the cheaper grades of meat. Efforts have been made to develop a market for them in the larger cities in the



east, but it is asserted that the cost of transportation has discouraged any regular movement. No shipments were made by complainant during the winter of 1919-1920, but during the previous winter some 40 or 45 carloads were shipped on which heavy losses were sustained. Of the 18 carloads here considered, 9 moved to New York, 7 to Chicago, and 1 each to Detroit and Philadelphia.

Rabbits, in carloads, have been for many years and are now rated third class in western classification. Since December 30, 1919, they have been rated third class, in carloads, in official classification, but prior thereto they were classified with game, not otherwise specified, and rated first class, any quantity. The rates to eastern points in effect when these shipments moved were the lowest combinations of class or commodity rates to Chicago or the Mississippi River and first-class rates beyond. The rates applicable over the Burlington for the movement to Chicago or other junction points with eastern lines were the fifth-class rates under exceptions to western classification; those of the Rock Island were commodity rates somewhat higher than the fifth-class rates. The Missouri Pacific assessed the third-class rates from two points and an incorrect commodity rate from the other. The rates charged by the Burlington are not assailed, but it is contended that those of the Rock Island and Missouri Pacific were unreasonable and unduly prejudicial to the extent that they exceeded the fifth-class rates contemporaneously in effect. The rates of the eastern carriers are alleged to have been unreasonable to the extent that they exceeded the rates applicable on fresh meats.

The following table, taken from exhibits of record, shows the number of shipments made from each point, the through rates charged, the rates on rabbits, and the fifth-class rates to Chicago, and the first-class, third-class, and fresh-meat rates east thereof:

From—	To—	No. of shipments.	To Chicago.			Beyond Chicago.		
			Through rate.	Rabbits.	Fifth class.	First class. <sup>1</sup>	Third class.	Fresh meats.
			<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Norton <sup>2</sup> .....	New York.....	2	186.5	74	74	112.5	75	69
Alma <sup>3</sup> .....	".....	2	181.5	68	68	112.5	75	69
Roxford <sup>4</sup> .....	".....	1	195	82.5	79.5	112.5	75	69
St. Francis <sup>1</sup> .....	".....	2	196.5	84	84	112.5	75	69
Oberlin <sup>1</sup> .....	".....	1	196.5	84	84	112.5	75	69
Concordia <sup>4</sup> .....	".....	1	* 178.5	66	60.5	112.5	75	69
Norton <sup>1</sup> .....	Detroit.....	1	137	74	74	63	42	30
Norton <sup>1</sup> .....	Philadelphia.....	1	* 189	82.5	74.5	108.5	73	67.5
Norton <sup>1</sup> .....	Chicago.....	3	.....	82.5	79.5	.....	.....	.....
Roxford <sup>4</sup> .....	".....	1	.....	82.5	79.5	.....	.....	.....
Brewster <sup>1</sup> .....	".....	1	.....	96.5	83	.....	.....	.....
Stockton <sup>4</sup> .....	".....	1	.....	127.5	84	.....	.....	.....
Lanora <sup>4</sup> .....	".....	1	.....	134	89	.....	.....	.....

<sup>1</sup> Applicable on rabbits, not dressed.

<sup>2</sup> C. B. & Q. station.

<sup>3</sup> C. R. I & P. station.

<sup>4</sup> M. P. station.

<sup>5</sup> Rate charged 197.5.

<sup>6</sup> Rate charged 192.5.

The rate adjustment west of Chicago is explained as follows: In 1902 or 1903 carriers operating in Kansas and Nebraska were asked to establish rates lower than third class on dead rabbits to eastern consuming points. Rates on the basis of fifth class were accordingly established under exceptions to western classification. This basis was applied by the Rock Island and Missouri Pacific for about 10 years, or until the revisions in the class rates required by our orders in *Colorado Mfrs. Asso. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 82, *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673, and *Iowa State Board of R. R. Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193 and 563. The reductions in the class rates which resulted caused the Rock Island and Missouri Pacific to withdraw the fifth-class basis on rabbits and to establish either commodity rates on approximately the same level as the former fifth-class rates or to restore the original classification basis of third class. The fifth-class basis has continued in effect over the Burlington since its establishment. In September, 1919, commodity rates to Chicago and St. Louis, based on the former fifth-class rates, increased 25 per cent in accordance with general order No. 28 of the Director General of Railroads, were established from Lenora and Stockton, on the Missouri Pacific, and from certain other points in Kansas.

The third-class rating in official classification on rabbits, not dressed, in carloads, minimum weight 20,000 pounds, was established December 30, 1919, as a result of evidence given before the classification committee that there was a carload movement to eastern points. The former first-class any-quantity rating now applies on less-than-carload shipments of rabbits, venison, and game not otherwise indexed by name. A rating of third class was suggested in *Consolidated Classification Case*, 54 I. C. C., 1, which is the same as that applicable on poultry and fresh meats. As a rule, poultry moves throughout official territory at the class rates with charges for icing in addition, but fresh meats are accorded commodity rates somewhat lower than third class.

Complainant submitted an exhibit comparing the rates on rabbits to Chicago and eastern points with rates on fruits and melons from the same points and on fresh meat from Wichita, Kans., and Denver, Colo. These commodities all move in refrigerator cars. Generally speaking, the exhibit shows that to Chicago the rates on rabbits are the same as, or slightly higher than, the rates on pears, and considerably higher than those on apples and melons. A rate of 46.5 cents applies on fresh meats from Wichita to Chicago, 663 miles. The record does not disclose any movement to Chicago or the east of the commodities mentioned. Other rate comparisons were also offered.

Defendants contend that, from a transportation standpoint, there is no analogy between shipments of rabbits and shipments of dressed meats except that both are carried in refrigerator equipment. They point out that rabbits move only during two or three months of the year, and that dressed meats move continuously, often in trainloads. A closer analogy is claimed between rabbits and dressed poultry. The present commodity rates on rabbits to Chicago and the Mississippi River are materially lower than the rates applying on dressed poultry.

The Missouri Pacific participated in the transportation of three of the shipments, one from Stockton to Chicago, one from Lenora to Chicago, and one from Concordia to New York. The third-class rates of 127.5 and 134 cents were charged on the shipments from Stockton and Lenora, respectively. A combination aggregating 197.5 cents was assessed on the shipment from Concordia, based on 85 cents to Chicago and the first-class rate of 112.5 cents beyond. A commodity rate of 66 cents to Chicago was in effect on January 6, 1919, when this shipment moved, making the applicable combination 178.5 cents. This shipment was overcharged. There is no justification on this record for the maintenance of the materially higher class rates from Stockton and Lenora to Chicago. The commodity rates subsequently established were 85 and 91.5 cents, respectively, subject to a minimum weight of 24,000 pounds.

We find that the record fails to sustain the allegations of undue prejudice; that the rates charged on the shipments to Chicago over the Rock Island were not unreasonable; that the rates charged on the shipments from Stockton and Lenora to Chicago over the Missouri Pacific were unreasonable to the extent that they exceeded 85 cents and 91.5 cents, respectively, and that the through combination rates on the shipments to points beyond Chicago were unreasonable to the extent that the components east of Chicago exceeded the third-class rates contemporaneously in effect. We further find that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. Inasmuch as the rates herein found reasonable, plus the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, are now in effect, no order for the future is necessary.

INVESTIGATION AND SUSPENSION DOCKET No. 1420.  
FRUITS AND VEGETABLES TO DUANE ST., N. Y.

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*Submitted January 11, 1922. Decided January 20, 1922.*

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Proposed increase in proportional rates on fruits and vegetables from the New Jersey terminals of the Erie Railroad to Duane street, New York, N. Y., and proposed establishment of terminal charges on fruits and vegetables at Duane street found not justified except as indicated. Suspended schedules ordered canceled without prejudice to the filing of schedules in conformity with the findings herein.

*Marion B. Pierce* for respondent.

*Fayette B. Dow* for Joint Council of International Apple Shippers Association, National League of Commission Merchants of the United States, and Western Fruit Jobbers Association of America; *C. R. Marshall* and *Chas. E. Bell* for American Fruit & Vegetable Shippers Association; *Butler, Lamb, Foster & Pope*, *Karl D. Loos*, and *George E. Farrand* for California Citrus League; and *W. H. Connell* for Merchants Association of New York.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

By schedules filed to become effective October 14, 1921, respondent, the Erie Railroad, proposes (1) to increase the proportional rates from its New Jersey terminals, Weehawken, Croxton, and Jersey City, to its Duane street station, New York, N. Y., on shipments of fruits and vegetables originating at points west of the Mississippi River and reconsigned from Albany, N. Y., Baltimore, Md., Philadelphia, Pittsburgh, or Scranton, Pa., or points east thereof, to \$51 per car, and (2) to establish terminal charges on fruits and vegetables at its Duane street station ranging from 2.5 to 4 cents per 100 pounds. Upon protest of various associations of fruit and vegetable shippers, the schedules were suspended until March 13, 1922.

Approximately 85 per cent of the fruit and vegetable traffic destined to Manhattan Island from California and the northwest moves over the Erie to its Duane street station (piers Nos. 20 and 21). The carrier unloads the traffic from the car and sorts it according to variety, quality, and size, and piles it at specified spaces on the pier designated by a representative of the consignee. The shipments are

disposed of at public auction on the second floor of the pier, the auction companies paying an annual rental for its use. A sample box is opened here and there for the inspection of prospective purchasers who make appropriate memoranda in catalogues provided by the auction companies to guide them in bidding on the various shipments. The auction is held every morning at 9 o'clock, except Saturdays, Sundays, and holidays. When disposition is made, the shipments are removed promptly by consignee or purchaser. Cantaloupes are generally unloaded on the bulkhead and removed before the auction begins, but the bulk of the traffic is handled in the manner above described. During the winter the traffic is confined to pier No. 20, which can be heated. During 1921 about 30,000 carloads of fruits and vegetables moved over the Duane street piers, the traffic having doubled in the past five years.

As the traffic, moving largely in solid trains, passes the principal junction points en route to Manhattan Island, the Duane street agent is notified by telegraph, who in turn notifies the consignees of the various cars by telephone. It appears that all the cars pass through Croxton; and when they arrive at that point the Duane street agent is notified by telephone and the consignees by messenger. The cars are put over the hump at Croxton and switched to respondent's "fruit hold tracks," where they are held on an average of about 48 hours. Before 1 p. m. on the day preceding each market day the consignees give respondent the numbers of the cars they wish delivered to the piers. The cars ordered are separated from the others by taking the string on each track back over the hump, and are classified according to consignee and assembled into trains of about 40 or 50 cars. The train proceeds to the Jersey City terminal, a distance of 2.19 miles. From the receiving yard at Jersey City the cars are switched onto the floats, which are then towed over to Duane street, the tugs handling two floats of 10 cars each at each trip. The loading of the floats begins about 3 or 4 p. m., and the last float leaves about 11 p. m. About 200 cars are handled per day. The method used in handling the traffic not only serves the convenience of the consignees but also enables respondent to make the maximum use of its facilities at Duane street. The handling of the traffic from its connecting lines involves an additional haul from the interchange to the Croxton yard and the return movement of the empty cars from Duane street to the interchange.

#### PROPORTIONAL RATES.

The present proportional rate on fruits from respondent's New Jersey terminals to Duane street is \$30 per car, which represents a rate of \$15 established in 1909, increased pursuant to the several

general rate increases made since that date. In 1919, the New York district freight traffic committee of the United States Railroad Administration recommended that the rate be increased to \$40 per car, but this recommendation was disapproved by the director of traffic. The rate generally applicable on vegetables is 17.5 cents per 100 pounds, minimum 20,000 pounds per car, which, based on the average loading of 24,000 pounds, is equivalent to about \$42 per car. The proposed change as to the charge on vegetables is indicated in the suspended tariff as a reduction; but the record shows that only in rare instances, as where cars are loaded to 30,000 pounds and subject to third-class rates, would the proposed charge result in a reduction. In general, each carrier reserves its terminal on Manhattan Island for traffic coming in over its own line. The proportional rates on fruits and vegetables were established in order that any of such traffic not coming in over the Erie might have access to the Duane street market. Application of the rates is restricted to traffic which could not have been routed over respondent's lines.

Respondent estimates the time consumed per train of 50 cars by the various switching operations to be as follows:

From interchange to Croxton.....	2 hours.
Movement over hump on arrival.....	1 hour.
Switching to fruit hold tracks.....	1 hour.
Separation over hump; classifying and assembling into trains of ordered cars.....	5½ hours.
Between Croxton and Jersey City, including return movement of empty cars.....	5½ hours.
Switching at Jersey City, including unloading of empty cars from floats.....	10 hours.
Movement over hump of empty cars.....	1 hour.
From Croxton to interchange.....	2 hours.
<b>Total.....</b>	<b>28½ hours.</b>

Figuring switching operations on the basis of 6 miles per hour and using the unit cost per mile of train operations for its New York division, respondent estimates the cost of the switching operations to be \$7.06 per car. Other costs per car are estimated as follows. For items marked with asterisks the unit cost is arrived at by dividing by average number of cars handled during the last five years.

Wages of yardmaster, yard and bridge clerks, switch tenders, etc.....	\$0.33
Extra icing expense, account holding of cars at Croxton.....	3.00
Floating cost:	
Car floats (based on one round trip of each float per day)....	\$5.17
Tug cost (5 hours tug service per float).....	5.17
Supervision and other expenses.....	.55
} 10.89	
Clerical expenses.....	*3.62
Proportion of wages of joint fruit inspector and clerk.....	.02
Direct labor, including foreman and checkers but not including cost of assorting.....	12.97
66 I. C. C.	

Coopering broken packages-----	\$2.60
Hand trucks, gang planks, and other equipment-----	.03
Cleaning, assembling, and removing fruit rubbish-----	.05
Police protection-----	.49
Rental of piers (allocated between passenger and freight on basis of square feet, and between fruit and vegetables and other traffic on tonnage basis)-----	*3.68
Heating of pier 20 (allocated on proportion of heated space devoted to fruit and vegetable traffic)-----	*.66
Lighting of pier (based on tests and charged to fruit and vegetable traffic on assumption that no other traffic is handled at night)-----	*.57
Lighting of car floats (based on tests)-----	.02
Maintenance of piers (allocated on same bases as rental)-----	*.70

The total of these estimated costs is \$46.64. It may be stated, however, that although the estimated cost of switching is shown as \$7.06, if the data upon which this is calculated are correctly stated this item would be \$7.55. Adding to these costs 15 per cent for insurance on contents of the piers, taxes, interest, and maintenance of way and other expenses, and 10 per cent for profit, respondent arrives at \$59 as a reasonable rate on fruits and vegetables from its New Jersey terminals to its Duane street station.

Protestants point out that the cost of icing is covered by a special charge collected from the consignee; that "clerical expenses" include supervision, inspection, and labor costs covered by other items; that "coopering broken packages" should not be charged wholly to the movement from the interchange to Duane street; and that the use of the actual number of cars handled during 1920 would have resulted in lower unit costs for rental, heating, lighting, and maintenance. They assert that respondent's estimate of the time consumed by the switching operations is obviously overstated; that in arriving at the unit cost of the switching operations the cost per mile of switching operations instead of train operations should have been used; that there is no basis for the assumption that five hours' tug service is required per float, or for the assumption that no other traffic is handled at night; that the unit cost of "clerical expenses" should have been arrived at by using the number of bills of lading required per car; that based on the present wage scale the cost for "direct labor" is apparently excessive; and that the items covering rental and maintenance were not allocated on the proper bases.

We find that the proposed schedule has not been justified. We do find, however, that, particularly in view of the recommendation of the New York district freight traffic committee previously referred to, a charge of \$40 per car on fruits for the service here considered, including unloading at destination, has been justified. We also find that on vegetables respondent has justified increases to the extent that the present charges are less than \$40 per car.

## TERMINAL CHARGES.

The terminal charges present a somewhat different problem. It is proposed that they shall apply on all fruit and vegetable traffic delivered at Duane street station. As is customary on Manhattan Island, delivery, including unloading, has heretofore been made at Duane street under the line-haul rates. Since 1920, a charge based on actual cost, ranging from \$2 to \$8 per car, has been made for the assorting service under an agreement between respondent and the representatives of the trade, and no objection is made by protestants to the publication of these charges in tariff form. The proposed terminal charges would range from \$6 to \$12 per car and include the assorting charge. Respondent states that these charges are to cover the excess in the cost of handling fruits and vegetables over the cost of handling other freight. While it is proposed that this charge shall apply on all shipments of fruits and vegetables delivered at the Duane street station, including those upon which the proportional rate above discussed is paid, some of respondent's cost figures submitted in support of the terminal charge are duplications of, and cover the same services as, those offered in support of the proposed proportional rate, and a number of the items cover services rendered prior to arrival of the shipments at Duane street station. The services for which the proposed terminal charges are published are all incidental to the efficient delivery of fruit and vegetables at Duane street. They are performed on all of that traffic and in no sense are special services comparable with refrigeration, reconsignment, or switching after placement at unloading point. Respondent makes no showing as to the adequacy of the compensation now received by the carriers for the through service on this traffic, merely pointing out that the rates on California fruit are blanketed to all territory east of the Colorado common points and that 15 years ago, when the traffic began to be handled in the manner above described, no corresponding increase was made in the through rates. This blanket has been voluntarily maintained by the carriers for many years and appears to have been satisfactory to all concerned. We find that the establishment of terminal charges higher than the present assorting charges has not been justified.

An order will be entered requiring the cancellation of the proposed schedules and discontinuing this proceeding, without prejudice to the publication of schedules establishing upon not less than five days' notice, charges not in excess of those herein found justified.



No. 11709.

HERCULES MINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND NORTHERN  
PACIFIC RAILWAY COMPANY.

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*Submitted June 24, 1921. Decided January 17, 1922.*

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1. Shipments of ores and concentrates, in carloads, from Burke, Idaho, to Wallace, Idaho, between June 25 and November 19, 1918, inclusive, found to have been overcharged. Reparation awarded.
2. Rate charged on similar shipments between November 20, 1918, and March 1, 1920, found applicable.

*A. P. Ramstedt and John H. Wourms* for complainant.

*E. J. Cannon, John F. Finerty, D. F. Lyons, and B. W. Scandrett* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant and the Director General of Railroads, as Agent, to the report proposed by the examiner, and the case was orally argued before us.

Complainant is a mining partnership operating a lead and silver mine at Burke, Idaho, and a mill and concentrator at Wallace, Idaho. By complaint filed August 7, 1920, it alleges that the rate of 20 cents collected on numerous carload shipments of ores and concentrates which moved from Burke to Wallace over the Northern Pacific, hereinafter called defendant, between June 25, 1918, and March 1, 1920, was illegal, and that the legal rate was 15.5 cents. We are asked to award reparation. Rates are stated in cents per ton of 2,000 pounds.

The issue is one of tariff interpretation. Prior to June 25, 1918, the rate applicable on this traffic was 12.5 cents. On that date defendant's special supplement containing the increases authorized by general order No. 28 of the Director General of Railroads became effective. This supplement provided in part as follows:

## RULES.

## RATES IN CENTS (Except Cents per Car)

1. Where rates named in tariffs or prior supplements thereto, as enumerated herein, in cents per hundred pounds, per package, per ton, per shipment, or other unit (except rates in cents per car—see Rule 6) are included in the figures shown in Column A, the rates shown opposite thereto in Column B will apply.

\* \* \* \* \*

## RATES IN DOLLARS PER TON.

4. Where tariff or prior supplement thereto, as enumerated herein, names rates in dollars, or dollars and cents, per net or gross ton, use the equivalent in cents per net or gross ton and apply rate in Column B opposite such figures, subject to Rule 8(b).

\* \* \* \* \*

## RULES FOR DISPOSITION OF FRACTIONS.

8. In applying increased rates fractions will be disposed of as follows:

\* \* \* \* \*

## (b) Rates per Ton.

Amounts of less than five (5) cents, drop the odd cents; thus—\$1.13 when the odd 3 cents are dropped will be \$1.10 per ton.

Amounts of five (5) cents or more, but less than ten (10) cents, convert to ten (10) cents; thus—\$1.18 when the odd 8 cents are converted to 10 cents will be \$1.20 per ton.

The rate set forth in column B opposite the rate of 12.5 cents in column A was 15.5 cents, but defendant by applying rule 8(b) collected a rate of 20 cents on complainant's shipments.

That rule applied only to rates quoted in dollars or dollars and cents per ton. It did not, and could not by any reasonable interpretation, qualify rule 1, which was complete in itself and specifically provided that the rates shown in column B of the table printed in the supplement would apply when rates were stated in cents per ton or other unit.

Effective November 20, 1918, a specific rate of 20 cents on this traffic was established. But complainant contends that the 15.5-cent rate remained in effect because the new tariff carried a note that "This tariff contains no changes in rates from those published effective June 25, 1918," and because the item naming the 20-cent rate did not bear a symbol indicating an increase over the previous rate, as required by our Tariff Circular 18-A. This contention is without merit. The tariff publishing the 20-cent rate and canceling the previous tariff conformed with the essential requirements of the act and was lawfully on file with us. The legality of the 20-cent rate was not affected by the note last quoted, which was an erroneous generalization, or by the omission of a symbol indicating increase.

We find that the applicable rates were 15.5 cents from June 25 to November 19, 1918, inclusive, and 20 cents thereafter. We further find that from June 25 to November 19, 1918, inclusive, complainant made shipments of ores and concentrates, in carloads, from Burke to

Wallace and paid and bore charges thereon at a rate of 20 cents; that it has been overcharged in the amount of the difference between the charges paid and those that would have accrued at the applicable rate of 15.5 cents; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 10457.

BOSTON CHAMBER OF COMMERCE ET AL.

v.

DIRECTOR GENERAL, AS AGENT, GRAND TRUNK  
RAILWAY COMPANY OF CANADA, ET AL.

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*Submitted November 14, 1921. Decided January 9, 1922.*

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Upon reargument of the matters covered by the former report, 59 I. C. C., 73, charges collected on carload shipments of grain consigned to points in New England or to New England gateways and subsequently reconsigned, found unreasonable. Reparation awarded.

*W. H. Chandler* for complainants.

*W. W. Meyer* for defendants.

REPORT OF THE COMMISSION ON REARGUMENT.

*MEYER, Commissioner:*

In this proceeding we had under consideration, among other things, the reconsignment rule of defendants which provided as follows:

If a car has been placed for unloading at original billed destination and reforwarded therefrom without being unloaded, to a point outside of the switching limits, it will be subject to the published rates to and from the point of reconsignment, plus five dollars (\$5.00) per car reconsignment charge, except that in no case shall the total charge be less than the charge based on the through rate from point of origin to final destination, plus \$5.00 per car reconsignment charge.

In our original report, 59 I. C. C., 73, 80, we found:

We are of the opinion and find that the rule is unreasonable in so far as it fails to provide that, when requested in writing by persons properly authorized, agents at first billed destination will hold all cars for the named consignee and notify such consignee at his post office address of all such cars reaching his station and so held, and that on such cars, if subsequently reconsigned, the through rate applicable via the diverting point will be applied from original shipping point to final destination, plus the reconsigning charges.

66 I. C. C.

Subsequently the carriers amended their tariffs to provide that if a car has been placed for unloading on a public delivery track but has not been unloaded or accepted by consignee or owner, it will be reconsigned at the through rates plus reconsignment charges.

Prior to our report in *Reconsignment Case*, 47 I. C. C., 590, the New England carriers made special provision for reconsignment at New England gateways designated as "hold points," whereby shipments destined to points in New England reaching the gateway points were held for reconsignment instructions and afterward reconsigned at the through rate plus a reconsignment charge.

Shipments of grain were made from various western points consigned to complainants or to the order of the consignors, with instructions to notify complainants, destined to points in New England or to "hold points," and were reconsigned to other points in New England. The defendants assessed the combination of local rates to and from the reconsignment point on shipments which had been constructively placed for unloading. They conceded that where cars had not been actually placed for unloading, such rates had been improperly assessed. We found that refund should be made of charges in excess of the through rates plus reconsignment charges; but on shipments which were actually placed for unloading prior to the receipt of reconsignment orders reparation was not awarded.

Upon petition of complainants, the proceeding was reopened for reargument upon the question of reparation.

In the *Reconsignment Case*, *supra*, at page 624, we said:

The proposal of the New England railroads to withdraw their special arrangements for reconsigning at the New England gateways is not justified upon the record. No evidence was offered in support of this proposal. The application of freight rates from the billed destination to a new destination, although less than locals, would often result in much higher charges than are proposed for similar services in trunk line territory and in other portions of the country. Most of the rates on this traffic are the same to all New England points. Upon this record there appears to be no reason why the New England carriers should not be permitted to make effective at these so-called hold points the reconsignment charges which are approved in this report.

Complainants assert that notwithstanding our finding, cars either were not stopped at the "hold points" but were forwarded to the original destination and placed for unloading, or were placed for unloading at the "hold points," although the carriers' agents knew the consignees were not located at such points; and that combinations of local rates plus reconsignment charges were assessed instead of the through rates to final destination, plus reconsignment charges.

Had the tariffs provided for reconsignment at hold points under the conditions which were in effect prior to our decision in the *Reconsignment Case*, *supra*, or had the rules subsequently established been

in effect, the shipments would have been charged the through rate plus the reconsignment charge. Defendants have stated that they are willing to make refund if authorized by us to do so.

Reference is made by the representative of complainants to shipments of other dealers, not complainants or interveners in this proceeding. While these claims have been called to our attention informally, they are not involved in this case and reparation on such shipments can not be awarded herein. Application should be made on the special docket.

Under the circumstances of this case we find that the charges assessed upon the shipments in issue were unreasonable to the extent that they exceeded the charges which would have accrued had the tariffs of defendants provided for reconsignment at the "hold points" under conditions which were in effect prior to our report in the *Reconsignment Case*, at the reconsignment charges in effect at the time the shipments moved.

We further find that complainants, Alpine McLean Company, W. D. Fulton, Webster-Tapper Company, and Campbell & Burnham, received shipments as described, and to the extent that they paid and bore the freight charges thereon were damaged thereby in the amount of the difference between the rates charged and the rates which would have accrued had the tariffs provided for reconsignment at "hold points" under conditions which were in effect prior to our report in the *Reconsignment Case*, at the reconsignment charges in effect at the time the shipments moved; and that they are entitled to reparation with interest. With respect to shipments of some of the complainants, the record does not show that they paid and bore the freight charges. Complainants should comply with rule V of the Rules of Practice, accompanying statements respecting shipments by appropriate proof in the form of affidavits that the freight charges were paid and borne by them. Defendants do not object to this form of proof.

No. 11675.

NYE SCHNEIDER FOWLER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH  
WESTERN RAILWAY COMPANY, ET AL.

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*Submitted July 7, 1921. Decided January 17, 1922.*

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Rates on coal, in carloads, from points in Colorado, Wyoming, Kansas, and  
Arkansas to destinations in Iowa and Nebraska found not unreasonable.  
Complaint dismissed.

*W. G. Kellogg* for complainant.

*Robert H. Widdicombe* for Director General, as Agent, and Chicago  
& North Western Railway Company; *Elmer L. Brock* for Denver &  
Salt Lake Railroad Company; and *C. Frankenberger* for Union  
Pacific Railroad Company.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in coal at Fremont, Nebr., al-  
leges that the combination rates assessed on 36 carloads of coal  
shipped from July to November, 1918, inclusive, from points  
in Colorado, Wyoming, Kansas, and Arkansas to points in  
Iowa and Nebraska were unjust and unreasonable to the ex-  
tent that they exceeded joint rates subsequently established. Rep-  
aration only is sought. Rates will be stated in amounts per ton  
of 2,000 pounds.

The shipments consisted of lump, grate, nut, and slack coal. Most  
of them originated on the Denver & Salt Lake and were moved by  
that carrier and its connections, the Union Pacific or Chicago, Bur-  
lington & Quincy, to Council Bluffs or Sioux City, Iowa, or to Fre-  
mont or Omaha, Nebr., and beyond these junctions over the Chicago  
& North Western. The haul was three line on all but three shipments.

The applicable rates were combinations of joint or local rates to  
the junction points and local rates beyond. For example, the rate  
from MacGregor, Wyo., to Ute, Iowa, 839 miles, was \$5.90, com-  
posed of rates of \$4.70 to Council Bluffs and \$1.20 beyond. The

joint rate subsequently established was \$5.62. Some shipments were undercharged and others overcharged.

The complaint grows out of the increase on June 25, 1918, under general order No. 28 of the Director General of Railroads, of each factor composing the combinations. Complainant contends that such increase was not authorized by that order, and to support this contention and show the intent of the Railroad Administration refers to the subsequently established joint rates constructed by the addition of a single increase to the aggregates of the several factors in effect prior to that date. It also refers to freight rate authority No. 10, but the evidence shows that this authority was not issued because the "double" increase was deemed unreasonable but solely for the purpose of restoring rate relationships and that it was subsequently canceled.

Prior to the war coal had not moved from Colorado to territory east of Fremont and Lincoln, Nebr. Under normal conditions Iowa was considered too remote to be a natural market, especially for coal from mines west of the continental divide. The joint rates are said to have been established to assist the Fuel Administration in supplying the Iowa district at that time. Defendants insist that the voluntary reductions thereby brought about afford no basis for condemning the combination rates previously maintained, combinations being the recognized basis of rates on coal from this territory.

Complainant offers no evidence to show that the rates assailed were unreasonable *per se* or in comparison with other rates on coal. Defendants' evidence shows that they were uniformly lower, although maintained under less favorable operating conditions, than the rates for comparable distances contemporaneously maintained from St. Louis, Mo., to Colorado points and from Duluth, Minn., to points in Montana. It is testified that the factor from Rock Springs, Wyo., to Fremont, assessed by the Union Pacific on two shipments to Hooper, Nebr., had been voluntarily reduced to a basis lower than that found reasonable in *Nebraska State Railway Commission v. U. P. R. R. Co.*, 13 I. C. C., 349. Other evidence shows the comparative reasonableness of various factors, the high cost of service on the lines serving the Colorado mines, due to excessive grades and curvatures, and the large empty return movement.

The application of general increases to the several factors does not, in and of itself, warrant a condemnation of the increased aggregate rate. *National Supply Co. v. C., M. & St. P. Ry. Co.*, 57 I. C. C., 739. The situation here presented differs from those in the cases cited by complainant. *Michigan Builders' Supply Co. v. Director General*, 63 I. C. C., 349.

We find that the rates assailed were not unjust or unreasonable and the complaint will be dismissed.

No. 12039.

ROMANN & BUSH PIG IRON & COKE COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC  
RAILROAD COMPANY, ET AL.

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*Submitted July 9, 1921. Decided January 17, 1922.*

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Rates on smithing coal, in carloads, from mines in Pennsylvania and West Virginia, sacked at St. Louis, Mo., and forwarded to destinations in western territory, found not unreasonable or otherwise unlawful. Complaint dismissed.

*William Voderberg* for complainant.

*John F. Finerty* and *Alex M. Bull* for Director General, as Agent.

*James Stillwell* for Pennsylvania Railroad Company.

*H. G. Herbel* for Missouri Pacific Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in pig iron, coke, and coal at St. Louis, Mo., alleges that the rates charged after June 24, 1918, on smithing coal, in carloads, from points in Pennsylvania and West Virginia to St. Louis, there sacked and forwarded to points in western trunk line, trans-Missouri, and southwestern lines territories, were, and that the present rates are, unreasonable and unduly prejudicial to the extent that they exceeded the rates in effect prior to June 25, 1918, plus a single increase of 40 cents per net ton. We are asked to prescribe rates which will permit the sacking of smithing coal at St. Louis on the basis of the general adjustment maintained prior to June 25, 1918, and to award reparation.

For several years complainant has purchased smithing coal in Pennsylvania and West Virginia, which is shipped in box cars to its yards at St. Louis. Much of the coal is there placed in sacks for the convenience of complainant's customers. The sacking is done by complainant's employees in the original cars, in which the sacked coal is usually reshipped. As complainant takes possession of the cars at St. Louis and new shipping instructions are there



issued, the movements to and from St. Louis are entirely distinct and separate from a transportation and traffic standpoint.

When complainant began sacking coal at St. Louis, it was able to do so at no greater transportation cost than would have been incurred in sacking at points of origin or destination, as through rates to the west and southwest were constructed by combination on the Mississippi River. The increases provided by general order No. 28 of the Director General of Railroads were made in the rates both on the inbound bulk coal to complainant's yards, and the outbound sacked coal, while, under the same order as modified by freight rate authority No. 10, the rates on through shipments of bulk coal made by combination on St. Louis were subjected to but one increase, applied in accordance with the "combination clauses," incorporated in the governing tariffs. The consequent disruption of the parity between the through rates on bulk coal and the rates on coal sacked at St. Louis is the basis of complainant's grievance. It appears that after the complaint was filed several of the carriers at St. Louis established transit arrangements affording complainant the relief sought, but the record is not clear as to the extent to which the complaint has been satisfied.

Complainant offered no evidence bearing on the reasonableness of the rates assailed, but contends that the adjustment in effect prior to June 25, 1918, should be restored; that its shipments are through shipments and it is unreasonable to apply the increase to each factor of the through rates applicable thereon while applying only one increase to the through rates applicable on shipments of bulk coal, and that the "combination clauses" referred to should be construed as applying to coal sacked at St. Louis. Those clauses relate specifically to through continuous movements, while the coal sacked by complainant moves into and out of its yards in distinct and separate shipments. To grant complainant the future relief for which it prays, in so far as its complaint has not already been satisfied by voluntary action of the carriers, would apparently require the entry of an order prescribing reshipping rates or transit arrangements at St. Louis. The record does not afford the basis for such an order.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful. An order will be entered dismissing the complaint.

No. 12182.

DARLING &amp; COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted July 18, 1921. Decided January 17, 1922.*

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Rates on animal tankage, in carloads, from Chicago, Ill., to Little Rock, Ark., found not unreasonable or otherwise unlawful. Complaint dismissed.

*Luther M. Walter* for complainant.

*W. B. Knight, John F. Finerty, and Fred W. Heid* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing fertilizers at Chicago, Ill., alleges that the rate charged on eight carloads of tankage, shipped during January, 1918, from Chicago to Little Rock, Ark., were unreasonable and in violation of the long-and-short-haul provision of the act. Reparation only is sought. Rates will be stated in cents per 100 pounds.

The tankage shipped was made from the remains of animals, was used as a fertilizer, and was shipped in bulk in paper-lined cars.

The shipments moved, as routed by complainant, over the Chicago & Eastern Illinois and the St. Louis Southwestern, 633 miles. Charges were collected at the applicable joint class rate of 23 cents, constructed by adding to the class-E rate of 18 cents from St. Louis, Mo., to Little Rock, the class-E arbitrary of 5 cents. A commodity rate of 26.5 cents became effective October 6, 1919, and in the meantime the class rate was increased to 29 cents.

Complainant contends that the rate charged was unreasonable to the extent that it exceeded 21 cents, which it states would represent the rate subsequently established minus the 25 per cent increase authorized by general order No. 28 of the Director General of Railroads.

It compares the rate charged with rates contemporaneously in effect on this commodity from and to other points, such as 21 cents

from Omaha, Nebr., to Little Rock, 721 miles; 16 cents from Kansas City, Mo., to Little Rock, 527 miles; and 16 cents from Chicago to Memphis, Tenn., 534 miles. Emphasis is also placed on the rate of 23 cents then in effect from Chicago to Shreveport, to which Little Rock is directly intermediate and 218 miles less distant.

Defendant contends that the 23-cent rate was not unreasonable, and shows that at the time of movement the terminal expenses at Chicago were about \$13 per car; that the wage increase under general order No. 27 of the Director General was made retroactive to January 1, 1918; and that conditions in the nature of increased operating expenses which general order No. 28 was intended to cover existed during the period of movement. Defendant asserts that comparisons with rates to Memphis and Shreveport are not significant, because the latter were depressed by water competition, citing *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, in which we permitted lower rates to be continued from Chicago to Memphis and Vicksburg, Miss., than to intermediate points. Defendant also relies upon *Virginia-Carolina Chemical Co. v. Director General*, 60 I. C. C., 377, in which we sustained as reasonable a rate of 19 cents on tankage manufactured from leather scraps, which moved between November, 1918, and January, 1919, both inclusive, from Curtis Bay, Md., to Pinners Point, Va., 308 miles.

The sale price of these shipments was over \$60 per ton. The actual loading was 50,000 pounds per car. The rate assailed yielded ton-mile and car-mile earnings of 7.3 mills and 18.2 cents, respectively. The evidence discloses no fourth section departure.

We find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12110.

MIDCONTINENT EQUIPMENT & MACHINERY COMPANY  
v.  
CHICAGO & ALTON RAILROAD COMPANY ET AL.

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*Submitted July 18, 1921. Decided January 17, 1922.*

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Rate on steel rails, in carloads, from St. Louis, Mo., to Springfield, Ill., found unreasonable. Reasonable maximum rate prescribed for the future and reparation awarded.

*J. D. Fidler* for complainant.

*J. A. Behrle* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in rails at St. Louis, Mo., alleges that the rate charged by defendants on one carload of steel rails forwarded from St. Louis to Springfield, Ill., on March 25, 1920, was, and that the present rate is, unjust and unreasonable. We are asked to award reparation and to establish a just and reasonable rate for the future. Rates will be stated in cents per 100 pounds unless otherwise indicated.

The shipment weighed 45,500 pounds and moved over the Missouri Pacific, Terminal of St. Louis, and Chicago & Alton, 99 miles. Charges of \$56.88 were collected at the applicable rate of 12.5 cents, equivalent to \$2.80 per long ton.

For several years prior to June 25, 1918, the rate had been 7.5 cents. On that date, pursuant to general order No. 28 of the Director General of Railroads, it was increased to 9.5 cents. This rate was a ninth-class rate governed by the Illinois classification. Consolidated classification No. 1, effective December 30, 1919, provided a sixth-class rating on railway track rails. On February 15, 1920, the sixth-class rate from St. Louis to Springfield was made 12.5 cents and on August 26, 1920, 17.5 cents. Reparation is sought to the basis of \$1.90 per long ton.

When the shipment moved a commodity rate of \$2.40 per long ton on steel rails was in effect from points on the Chicago & Alton and the

Terminal of St. Louis at St. Louis to points on the Chicago & Alton north of Springfield, for distances up to 200 miles. There was also contemporaneously in effect a commodity rate of \$2.40 per long ton from St. Louis to Chicago, over the Chicago & Alton, 284 miles, and the tariff was subject to rule 77 of our Tariff Circular 18-A. On August 26, 1920, these rates were increased to \$3.36 per long ton.

Complainant points out that between November 16, 1914, and January 11, 1921, the rate to Springfield was increased much more than the rate to Chicago. The revenue per net ton-mile is 2.5 cents under the rate charged and 7.5 mills under the rate contemporaneously in effect to Chicago. The distance to Chicago is more than twice that to Springfield and normally the earnings per ton-mile should be somewhat less for greater distances. Complainant also compares the rate charged with contemporaneous rates of 19 and 12.5 cents from Chicago and St. Louis, respectively, to Kansas City, Mo., 483 and 284 miles, respectively.

There was contemporaneously in effect a rate of \$2.40 per long ton from St. Louis to Springfield over various other lines for distances from 100 to 148 miles. This rate, which was increased to \$3.36 on August 26, 1920, is virtually part of a group adjustment and defendants assert that it would be affected if the rate assailed were reduced.

Defendants compare the rate assailed with a rate of 12 cents, since increased to 17 cents, on bridge and structural iron and steel articles from St. Louis to Springfield, and the present rate with a rate of \$3.36 per long ton on rails from Chicago to Niles, Mich., over the Michigan Central, 83 miles, to Plymouth, Ind.; over the Pittsburgh, Cincinnati, Chicago & St. Louis, 84 miles; and to Milford Junction, Ind., over the Baltimore & Ohio, 103 miles.

We find that the rate charged was unreasonable to the extent that it exceeded \$2.40 per long ton, and that the present rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed \$2.40 per long ton, subject to the increase authorized in *Increased Rates, 1920*, 58 I. C. C., 220; that complainant made the shipment described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$8.14, with interest.

An appropriate order will be entered.

No. 12097.  
 GEORGE F. AMBROSE  
 v.  
 DIRECTOR GENERAL, AS AGENT.

*Submitted July 13, 1921. Decided January 17, 1922.*

Minimum weight applicable on fir piling, in triple carloads, from Kulshan, Wash., to Bellingham, Wash., during federal control, found unreasonable. Reparation awarded.

*Glenn R. Madison* for complainant.

*John F. Finerty, Thomas M. Woodward, A. J. Laughon, and F. M. Dudley* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant, a dealer in poles and piling at Bellingham, Wash., by complaint filed January 5, 1921, alleges that by the application of excessive minimum weights unreasonable charges were collected for the transportation of fir piling, in double and triple carloads, from Kulshan, Wash., to Bellingham, during the period from June 25, 1918, to August 2, 1919. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over the Bellingham & Northern, which, during that period, was under federal control.

At the time of movement the minimum weight for single and double carloads was the marked capacity of car for each car used, and the rate 2.5 cents. For triple loads, the minimum weight was 40,000 pounds for each car used, and the rate 4 cents. The minimum charge of \$15 per car, established by the Director General of Railroads under general order No. 28, was also applicable.

Most of the shipments consisted of triple loads, and in the majority of instances flat cars of 60,000 and 70,000 pounds capacity were used. These cars were old and in bad condition. Considerable difficulty was experienced by defendant in transporting the piling on these cars, and complainant was requested not to load them very

heavily. In triple loading the piling rests on bunks placed on the first and third cars, the middle car being an idler. The master car builders' rules provide that the weight resting on each end car shall not exceed two-thirds of the marked capacity of that car. When cars of 70,000-pound capacity were used not more than about 46,000 pounds could properly rest upon each first or third car, and, since the idler carried no weight, a triple load could not properly exceed 92,000 pounds, which was 28,000 pounds less than the triple-load minimum. Toward the latter part of the period of movement quite a number of larger and better cars were furnished and some, at least, were capable of loading to the prescribed minimum. None of the cars was weighed.

Complainant questions the propriety of charging a minimum weight of 120,000 pounds on a triple load, when the actual weight of the majority of the shipments apparently did not materially exceed 92,000 pounds. Effective August 2, 1919, the Director General provided a minimum weight of 60,000 pounds on single loads, with a rate of 2.5 cents, and of 33,000 pounds on double and triple loads for each car used, with a rate of 4 cents. Complainant asks retroactive effect of the latter minimum on triple loads, subject to the minimum charge of \$15 per car. Reparation to this basis would amount to \$1 per car. The charges on double loads would not be affected by an application of the subsequently established minimum weight because of the \$15 per car minimum charge. When the shipments moved the 33,000-pound minimum applied on transcontinental traffic and locally in the Pacific northwest on lines other than the Bellingham & Northern.

The distance from Kulshan to Bellingham is 22.5 miles, and the minimum earnings per car on the triple carload shipments were \$16. Defendant regards such earnings as unusually low, particularly as the cars were returned empty. During this period fir piling was worth from 25 to 50 per cent more than in December, 1917, and was still more valuable as compared with prices in 1916, cars were scarce, and shippers were glad to get whatever equipment was available. Defendant contends that the value of the service was such as to justify the charges collected.

There is no basis for a finding that the charges on the double loads were unreasonable. We find that the charges applicable on the triple loads were unreasonable to the extent that they exceeded charges that would have accrued on the basis of a minimum weight of 33,000 pounds for each car used, subject to a minimum charge of \$15 per car. We further find that complainant made the shipments as described and paid and bore the charges thereon; that he has been dam-

aged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found to have been reasonable; and that he is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 12075.

AMERICAN WOOD PIPE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, ET AL.

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*Submitted July 13, 1921. Decided January 17, 1922.*

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Charges collected on two carloads of wooden pipe shipped from Tacoma, Wash., to Webak and Still, Oreg., found unreasonable. Reparation denied owing to the failure of complainant to prove payment of the charges.

*Emuel J. Forman* for complainant.

*John F. Finerty* and *Thomas M. Woodward* for Director General, as Agent.

*W. A. Robbins* for Oregon-Washington Railroad & Navigation Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner.

Complainant, a corporation manufacturing wooden pipe at Tacoma, Wash., by complaint filed December 27, 1920, seeks reparation on account of alleged unreasonable rates charged on two carloads of wooden pipe shipped from Tacoma, one to Webak, Oreg., and the other to Still, Oreg., in January, 1918. The present rates are not in issue. Rates will be stated in cents per 100 pounds.

The shipments moved over the lines of the Oregon-Washington Railroad & Navigation and the Oregon Short Line.

Charges were collected at the applicable joint class-C rates of 47 and 49 cents to Webak and Still, respectively. When the shipments moved there was a commodity rate of 39 cents from Tacoma to Blakes



Junction, Oreg., intermediate to both destinations, and distance class-C rates of 5 and 7 cents to Webak and Still, respectively, making combinations of 44 and 46 cents. Complainant asks reparation to the basis of the aggregate of the intermediate rates. It does not appear that the situation was protected by a fourth section application.

We have repeatedly found that a joint rate which exceeds the combination of intermediate rates contemporaneously applicable is prima facie unreasonable. The evidence is insufficient to overcome that presumption.

We find that the rates charged were unreasonable to the extent that they exceeded the aggregates of the intermediate rates, contemporaneously in effect. Inasmuch as complainant's witness was unable to give direct testimony as to who paid and bore the charges no reparation can be awarded.

An order will be entered dismissing the complaint.

66 I. C. C.

No. 11533.

## UNION TRACTION COMPANY OF INDIANA

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & EASTERN  
ILLINOIS RAILROAD COMPANY, ET AL.

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*Submitted July 11, 1921. Decided January 17, 1922.*

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Rates on bituminous coal, in carloads, from mines in the Linton group in southwestern Indiana, to destinations in Indiana northeast of Indianapolis, during federal control, found not unreasonable. Complaint dismissed.

*O. P. Gothlin* for complainant.

*Royal T. McKenna* and *John F. Finerty* for Director General of Railroads; *James Stillwell* for Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company; *W. S. Parkhurst* for Central Indiana Railway Company; *K. L. Richmond* for Chicago & Eastern Illinois Railroad Company and *W. J. Jackson*, receiver; and *R. D. Hunter* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company.

## REPORT OF THE COMMISSION.

DIVISION 3. COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, operates an electric interurban railroad in Indiana. By complaint filed June 16, 1920, it alleges that the rates charged on numerous carloads of bituminous coal shipped intrastate during the months of June to October, 1918, inclusive, from mines in the Linton group, in southwestern Indiana, to Anderson, Eaton, Marion, Lawrence, New Castle, Daleville, Alexandria, Muncie, Elwood, Springport, Tipton, Winchester, and Fort Benjamin Harrison, Ind., were unreasonable to the extent that they exceeded \$1.15 per ton. Reparation is sought. Rates will be stated in amounts per ton of 2,000 pounds.

According to one of complainant's exhibits, the average distances from the Linton group to these destinations, which are northeast of Indianapolis, range from 116 to 182 miles over several routes and average 150 miles. For some time prior to June 25, 1918, the rates were, for the most part, 25 cents higher than to Indianapolis. On June 24, 1918, the rates were 65 cents to Indianapolis and 90

cents to these destinations, except that to Daleville over one route the rate was \$1.05 and to Eaton, New Castle, and Springport over another route, \$1. Pursuant to general order No. 28 of the Director General of Railroads, the rate to Indianapolis was increased to 90 cents on June 25, 1918, and the rates to these destinations to \$1.20, \$1.30, or \$1.33. The \$1.33 rate applied to Lawrence, the nearest point, 116 miles, and to Daleville, 150 miles. The \$1.20 rate applied to Winchester, and most distant destination, 182 miles, and the \$1.30 rate to the other destinations. Effective October 5, 1918, the rate to all these destinations became \$1.25, that to Indianapolis remaining at 90 cents.

General order No. 28 contained the following provision:

Where rates from producing points or to destinations have been based on fixed differentials in cents per ton, such differentials to be maintained, the increase to be figured on the highest rated point or group.

Complainant contends that the rates to these destinations had been maintained for years on a fixed differential over the rate to Indianapolis, and that, in consonance with the above provision, defendants should have continued that adjustment. It is pointed out that by order of September 17, 1920, the Public Service Commission of Indiana prescribed a differential of 25 cents over Indianapolis, although it does not appear that specific rates were fixed.

Complainant undertakes to establish the unreasonableness of the rates assailed by several tests. In one, a terminal allowance of 40 cents is first deducted from the 90-cent rate to Indianapolis, the remainder reduced to a ton-mile figure, which in turn is projected for the average distance of 150 miles to these destinations, and the 40-cent terminal allowance is then added, producing a rate of \$1.11. Projecting the same rate to the several destinations, on a straight ton-mile basis, without deduction of a terminal allowance, would result in rates ranging from 97 cents at Lawrence to \$1.51 at Winchester. Other similar computations were submitted, but aside from the fact that the so-called terminal allowance is an assumed figure as applied to the particular traffic, the varied results fall short of being acceptable tests of the rates assailed.

Defendants submit no rate comparisons but deny that the rates from and to the points here considered were ever differentially related to the rate to Indianapolis, or that the increases were in conflict with the provisions of general order No. 28.

We have frequently said that neither the Director General's departure from the terms of his general orders nor the subsequent reduction of rates is necessarily proof that the rates were unreasonable.

We find that the rates assailed were not unreasonable. The complaint will be dismissed.

No. 11681.  
OXFORD PAPER COMPANY ET AL.  
v.  
DIRECTOR GENERAL, AS AGENT.

*Submitted June 28, 1921. Decided January 17, 1922.*

Rates on bituminous and small sizes of anthracite coal from points in Pennsylvania and from Fairmont, W. Va., to Rumford and South Brewer, Me., found unreasonable. Reparation awarded.

*Frederick Manley Ives* for complainants.

*John F. Finerty, Royal T. McKenna, and Fred W. Heid* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner; and the case was orally argued before us.

The Oxford Paper Company and the Eastern Manufacturing Company, complainants, manufacture paper and wood pulp at Rumford and South Brewer, Me., respectively. By complaint filed July 28, 1920, they allege that the rates made effective June 25, 1918, on bituminous and anthracite coal from Fairmont, W. Va., and mines in Pennsylvania to Rumford and South Brewer were unreasonable and unduly prejudicial. The prayer is for reparation. Rates will be stated in amounts per long ton.

Rumford and South Brewer are on the Maine Central, 84.5 miles north and 138.5 miles northeast of Portland, Me., respectively. With the exception of three cars from Fairmont, the bituminous coal moved from mines in Pennsylvania on the Buffalo, Rochester & Pittsburgh, Pennsylvania, New York Central, and Pittsburg & Shawmut, principally in the Clearfield district. The anthracite coal, all of which consisted of buckwheat No. 4, barley, and other small sizes, as distinguished from prepared sizes, originated at mines in Pennsylvania on the Lehigh Valley, Philadelphia & Reading, Central of New Jersey, Pennsylvania, Erie, and Lehigh & New England. The shipments moved over the various originating lines and their connections to Rotterdam Junction or Mechanicville, N. Y., Boston & Maine to Portland, thence Maine Central.

When the shipments moved, the rates on small sizes of anthracite to points on the Maine Central north of Portland were made, as a rule, on the combination of separately established rates to Rotterdam Junction or Mechanicville, thence to Portland and beyond. On prepared sizes joint rates were maintained to a few points on the Maine Central west of Portland, on what was formerly the St. Johnsburry & Lake Champlain Railroad, and generally elsewhere in New England. The Delaware & Hudson published joint rates on both prepared and small sizes from its mines and from mines on the Delaware, Lackawanna & Western and Erie to all Maine Central destinations, including Rumford and South Brewer. The rates on bituminous coal were combinations of the rates to and from Portland, although prior to June 25, 1918, they also were the sums of the separately established rates to and beyond Rotterdam Junction or Mechanicville, thence to Portland, and beyond.

In August and September, 1918, rates lower than those in effect June 25, 1918, were established. The following table shows rates at successive periods on bituminous coal and the small sizes of anthracite from the various points of origin, using short-line distances as computed by complainant:

Haul.	Short-line distance.	June 24, 1918.				June 25, 1918.				Aug-Sept., 1918.
		To Rotterdam Junction.	To Portland.	Beyond Portland.	Total.	To Rotterdam Junction.	To Portland.	Beyond Portland.	Total.	
<i>Rates on anthracite coal, small sizes.</i>										
To Rumford from—	<i>Miles.</i>									
Packerton.....	655	\$1.95	\$1.35	\$1.05	\$4.35	\$2.30	\$1.80	\$1.50	\$5.60	\$4.90
Shamokin.....	740	2.00	1.35	1.05	4.40	2.40	1.80	1.50	5.70	4.90
Mahanoy.....	812	2.00	1.35	1.05	4.40	2.40	1.80	1.50	5.70	4.90
Beaver Brook.....	602	1.95	1.35	1.05	4.35	2.20	1.80	1.50	5.50	4.90
Auburn.....	830	2.40	1.35	1.05	4.80	2.90	1.80	1.50	6.20	5.20
To South Brewer from—										
Dunmore.....	601				<sup>1</sup> 3.88				<sup>1</sup> 4.40	<sup>1</sup> 4.40
Packerton.....	708	1.95	1.35	1.20	4.50	2.30	1.80	1.60	5.70	5.00
Nesquehoning.....	630	1.95	1.35	1.20	4.50	2.20	1.70	1.60	5.60	5.00
Shamokin.....	794	2.00	1.35	1.20	4.55	2.40	1.80	1.60	5.80	5.10
Coaldale <sup>2</sup> .....	655	2.00	1.35	1.20	4.55	2.40	1.80	1.60	5.80	5.10
Carbondale.....	580				<sup>1</sup> 3.78				<sup>1</sup> 4.30	<sup>1</sup> 4.30
<i>Rates on bituminous coal.</i>										
To Rumford from—										
Reynoldsville.....	773	1.85	1.35	1.05	4.25	.....	3.80	1.50	5.30	4.80
Fairmont.....	929	2.10	1.35	1.05	4.50	.....	4.05	1.50	5.55	5.05
To South Brewer from—										
Morris Run.....	708	1.05	1.35	1.20	3.60	.....	3.00	1.60	4.60	4.20
Falls Creek <sup>3</sup> .....	<sup>3</sup> 798	1.85	1.35	1.20	4.40	.....	3.80	1.60	5.40	5.00

<sup>1</sup> Through rate published by the Delaware & Hudson Company.

<sup>2</sup> From Coaldale, Tamaqua, Lansford, and Seek.

<sup>3</sup> From Falls Creek, Pioneer No. 3, Leisure Siding, Luthersburg, Savan, Huskin, Hazelwood, Provident, Snow Shoe, Midvale, and McConnell.

The rates attacked are those established June 25, 1918, under general order No. 28 of the Director General of Railroads. That order provided that if the rates on coal had not been increased 15 cents per ton since June 1, 1917, as authorized in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and under our orders entered March 12 and 26, 1918, in Investigation and Suspension Docket No. 1111, the difference between 15 cents and the amount, if any, by which the rate had been increased should be added to the rates then in effect and the resulting figures increased in the following amounts: 30 cents per net ton, equivalent to 34 cents per long ton, where the rates were \$1 to \$1.99 per ton; 40 cents per net ton, equivalent to 45 cents per long ton, where the rates were \$2 to \$2.99; and 50 cents per net ton, equivalent to 56 cents per long ton, where the rates were \$3 or higher. In disposing of fractions amounts of less than 5 cents were to be omitted, and amounts of 5 cents or greater, but less than 10 cents, were to be increased to 10 cents.

Rates on both anthracite and bituminous coal were increased 15 cents per ton in the spring of 1917 by our permission. With respect to anthracite coal, the increase was limited to 15 cents in the through rate when made on combination, and, as pointed out in *Mississippi River & Bonne Terre Ry. v. Director General*, 55 I. C. C., 674, it was not contemplated that the permission to increase the rates on bituminous coal would be construed as authorizing a maximum increase of 15 cents in each component of rates made on combination, but that the aggregate rate should be increased by not more than 15 cents.

Generally speaking, the rates on anthracite and bituminous coal from the points of origin named to Portland were increased 15 cents per ton, 10 cents west of Rotterdam Junction or Mechanicville, and 5 cents east thereof. There were certain exceptions in that the rates on small sizes of anthracite from Shamokin, Mahanoy, Coaldale, Tamaqua, Lansford, and Seek to Rotterdam Junction and Mechanicville were increased 15 cents, which, with the increase of 5 cents east of those points to Portland, resulted in an increase of 20 cents to Portland. The rates from Portland to Rumford and South Brewer were increased 5 cents. It will thus be observed that the rates in effect on June 24, 1918, to Rumford and South Brewer were generally 20 cents, and in some instances 25 cents, higher than those in effect prior to the 15-cent increase authorized.

Shortly after general order No. 28 had been issued, the attention of the Railroad Administration was directed to the fact that frequently joint rates and combination rates applied between the same and contiguous points over different routes. In order to preserve existing relationships and avoid varying rates, the carriers were instructed on June 8 and 17, 1918, and in freight rate authority No. 10

of July 2, 1918, to apply the increases in general order No. 28 to the through movement and not to each component of rates made on combination. Upon inquiry regarding the specific rates under consideration, the Oxford Paper Company was advised on June 14, 1918, by the Railroad Administration that this course would be followed. It was recognized that the time intervening between June 8 and 25 might be so short as to render it impossible for the revised rates to become effective on the latter date, and directions were therefore given to make them effective as soon as possible.

In accordance with these instructions joint rates were published, effective June 25, 1918, on prepared sizes of anthracite and on bituminous coal from the different mines to Portland. A joint rate of \$3.80 was published on bituminous coal from the Clearfield district to Portland, based on the combination rate of \$3.20 in effect June 24, 1918, plus 60 cents, the equivalent of the 50-cent increase per net ton in rates of \$3 or higher with the fraction disposed of as authorized in the order. The rates north of Portland were first increased 10 cents per ton and then by the amount specified for rates between \$1 and \$1.99. This had the effect of applying the 15-cent increase and general order No. 28 twice.

Joint rates to Portland on small sizes of anthracite were not published on June 25, 1918, by any defendant carrier except the New York, Ontario & Western, but were published on prepared sizes. There were, therefore, three increases in the rates on the shipments of small sizes made by complainants, and in some instances the through rates apparently included three increases of 15 cents each. While these changes were taking place it is to be observed that a single increase was made under general order No. 28 in the rates from mines on the Delaware & Hudson, Delaware, Lackawanna & Western, and Erie to destinations on the Maine Central north of Portland, including Rumford and South Brewer. No complaint is made against the rates from points on the lines of those carriers.

Effective on various dates between August 6, 1918, and September 28, 1918, joint rates were established to the points where complainants' mills are located, on the basis of a single unit increase.

Complainants contend that the double and triple increases made in the rates on coal to Rumford, South Brewer, and other points on the Maine Central brought about a serious disturbance in the rate relationships in New England, contrary to the intention of the Railroad Administration. The record shows that a single increase was applied on bituminous coal from the Pennsylvania fields to all points in New England on the New York, New Haven & Hartford, Boston & Albany, Boston & Maine, Central Vermont, and Rutland railroads, and to seven points on the Maine Central. This was because

joint rates were in effect on June 24, 1918, or were established on June 25, 1918, in compliance with the directions given in general order No. 28. Single increases were also made in the rates on prepared sizes of anthracite to points on the New York, New Haven & Hartford, Boston & Albany, Boston & Maine, and to the same points on the Maine Central. The rates to the Maine Central points applied through Portland. As stated, a single increase was made by the Delaware & Hudson in the rates on all sizes of anthracite to all points in New England, including points on the Maine Central. Complainants urge that if the separate increases under general order No. 28 did not result in unreasonable rates it would have been possible for the Railroad Administration to preserve existing relationships by providing additional increases in joint rates. That it did not do so, but instead maintained for approximately two years the rates established in August and September, 1918, is urged as demonstrating that the rates carrying the single increase were not considered to be unreasonably low.

As further evidence that the rates assailed were not too low, complainants refer to the subsequent reduction, in the rail components of rail-ocean-rail rates on coal to New England, to the basis of 15 cents plus 56 cents over the rates on June 1, 1917, and to a recommendation by the eastern freight traffic committee of the Railroad Administration that "reparation be made in the case of increases on coal from Pennsylvania mines to Rumford, Me., etc., resulting from the application of separately published rates instead of the single unit increase."

Defendant introduced in evidence excerpts from the records in other proceedings dealing with increases in rates under general order No. 28 for the purpose of showing that it was the intention of the Railroad Administration to increase all coal rates by the amounts set out in the order, whether used as components of through rates or otherwise. The subsequent modification restoring the relationships theretofore existing, it is urged, can not be considered as an admission that the higher rates charged were unreasonable *per se*. Evidence of this kind was considered in *Gosline & Co. v. Director General*, 55 I. C. C., 220, in which it was held that the proper interpretation of general order No. 28 is of importance only in so far as it may show whether the carriers exceeded the authority of the order or whether the rates established represented the then view of the Railroad Administration as to the proper level of the rates intended to be made effective. The controlling question is whether the rates made effective June 25, 1918, were unreasonable or otherwise unlawful and this must be determined upon considerations apart from the construction of the order. *Parlin & Orendorff Co. v. Director General*, 59 I. C. C., 63.



Defendant contends that the rates under attack were not unreasonable, but were, in fact, subnormal, because the component to Portland was depressed by water competition. It appears that the \$3.80 rate on bituminous coal from the Clearfield district to Portland was published to meet the competition of boat lines plying between Newport News, Va., and other ports, and Portland. That rate, however, compares favorably with rates from the Clearfield district and from Pittsburgh to equidistant points in New England and Canada, which apparently are not affected either by water or short-line competition.

In support of the allegation of unreasonableness complainants compared the rates of \$5.30 and \$5.40 charged on bituminous coal from the Clearfield district to Rumford and South Brewer for distances of 728 and 782 miles, respectively, with rates of \$4.70 to Fitzdale, Vt., 754 miles, \$4.50 from Pittsburgh to Sherbrooke, Quebec, 772 miles, \$4 to Newton, Mass., 728 miles, and \$4.20 to Berlin, N. H., 762 miles. Defendant also referred to rates ranging from \$3.20 for 480 miles to \$5 for 748 miles. The rates of \$5.70 and \$5.80 charged on anthracite coal from Coaldale, as typical of the anthracite region, to Rumford and South Brewer were compared by complainants with rates of \$4.30 from Scranton to South Brewer, 597 miles, \$5.20 to Edmundston, New Brunswick, 725 miles, and \$5.20 to Chatham, New Brunswick, 948 miles. Comparisons were also offered between the rates on anthracite and rates on steel rails and cement from points in Pennsylvania to Rumford, South Brewer, and other points equally distant, showing that the anthracite rates were substantially higher.

We find that the rates charged on small sizes of anthracite coal and on bituminous coal on and after June 25, 1918, from the points of origin hereinbefore named, except Dunmore and Carbondale, to Rumford and South Brewer, were unreasonable to the extent that they exceeded the rates subsequently established in August and September, 1918, from and to the same points; that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice. In complying with this rule, outstanding overcharges and undercharges, if any, should be taken into consideration. No order for the future is necessary.

No. 11845.

GROWERS RICE MILLING COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted March 31, 1921. Decided January 17, 1922.*

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Rate collected on paddy rice, in carloads, from Citrona and Norman, Calif., to South San Francisco, Calif., during federal control, found applicable and not unreasonable. Complaint dismissed.

*Melvin E. Van Dine, Bishop & Bahler, and R. T. Boyd* for complainant.

*F. H. Wood, James R. Bell, C. W. Durbrow, Elmer Westlake, and Frank B. Austin* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation buying and milling rice at San Francisco, Calif., alleges that the rate of 22 cents exacted on two carloads of paddy rice shipped December 19, 1918, and November 20, 1919, from Norman and Citrona, Calif., to South San Francisco, Calif., was unreasonable and illegal to the extent that it exceeded 17.5 cents. Reparation only is sought. Rates are stated in cents per 100 pounds.

The issue presented is one of tariff interpretation only, the question being whether the 25 per cent increase in freight rates under general order No. 28 of the Director General of Railroads should be applied to shipments of rice which moved between July 2, 1918, and November 30, 1919, from the origins to the destinations shown on twenty-fifth revised page 213 of Southern Pacific Company's local and proportional freight tariff I. C. C. No. 3899. That page names commodity rates on paddy rice, in packages or in bulk, in carloads, minimum 40,000 pounds, to and from a number of points within the state of California, and shows that it was "Issued May 27, 1918," to become "Effective July 2, 1918."

66 I. C. C.

General order No. 28, which was dated and issued on May 25, 1918, provided, in part:

It is ordered that all existing freight rates, \* \* \* including changes heretofore published but not yet effective, on all traffic carried by all said railroad and steamship lines under Federal control \* \* \* be increased or modified, effective June 25, 1918, as to freight rates \* \* \* to the extent and in the manner indicated and set forth in the "Exhibit" hereto attached and made a part hereof, by filing schedules with the Interstate Commerce Commission effective on not less than one day's notice.

The exhibit provided in section 2 (c) that all intrastate commodity rates should be increased 25 per cent, and in section 4 (a) that "all intrastate rates \* \* \* which are to be increased under this order, if not now on file, \* \* \* shall be immediately filed with the Interstate Commerce Commission." In conformity with those provisions the tariff named, which had not theretofore been filed with us, and supplement No. 1 thereto, the latter bearing date June 15, 1918, effective June 25, 1918, were filed with us on June 21, 1918. The supplement provided, in part:

Effective June 25, 1918, all rates in effect May 25, 1918 (and all rates published prior to May 25, 1918, but not then effective, and not under suspension by the Interstate Commerce Commission), named in tariffs enumerated herein and in prior supplements thereto, as indicated, to each of which tariffs this is a special supplement, are increased to the rates shown \* \* \*.

Complainant contends that the rates named on the twenty-fifth revised page "Issued May 27, 1918," were not in effect on May 25, 1918, and had not been published prior to that date to take effect on a later date, and therefore did not become subject to the 25 per cent increase carried in supplement No. 1, until the tariff was re-issued on November 30, 1919. In other words, complainant's position is that during the period from June 25, 1918, to July 2, 1918, the legal rates were those published on the prior revised page increased by 25 per cent and that between July 2, 1918, and November 30, 1919, the rates shown on the twenty-fifth revised page were in effect and that as to such rates the 25 per cent increase was not applicable.

The position of the Director General is that the twenty-fifth revised page comes clearly within the terms of general order No. 28 and that the legal rates to have applied on this traffic between June 25, 1918, and November 30, 1919, were the rates shown thereon increased 25 per cent under supplement No. 1. As stated, twenty-fifth revised page bears the notation that it was issued on May 27, 1918, to become effective July 2, 1918. The witness for the Director General called attention to certain figures shown in small type in the lower left-hand corner of the page and testified that the revised page

was actually "issued and distributed on May 21, 1918." On brief defendants discuss "publication" of tariffs and cite *United States v. Miller*, 223 U. S., 599. In that case it was contended that a tariff is not published, as that term is used in section 6 of the interstate commerce act, unless printed copies are "kept posted in two public and conspicuous places in every depot." The Supreme Court said that "publication is a step in establishing rates" and that "from all the provisions on the subject it is evident that the publication intended consists in promulgating and distributing the tariff in printed form preparatory to putting it into effect." Defendants therefore urge that as the revised page was distributed on May 21, 1918, before the issuance of general order No. 28, it was "published" prior to May 25, 1918, to become effective on a subsequent date, and thus comes within the provision of general order No. 28 affecting rates "heretofore published but not yet effective." The meaning of "publication" is not here controlling.

In conformity with the terms of general order No. 28, "Local and Proportional Freight Tariff No. 730" of the Southern Pacific, "naming commodity rates on intrastate traffic between points in California," which theretofore had been filed only with the Railroad Commission of California, and which bore the notation in red ink, bold type, "NOTICE: RATES NAMED IN THIS TARIFF *MUST NOT* BE USED TO MAKE THROUGH RATES UPON INTERSTATE TRAFFIC," was on June 21, 1918, filed with us. The title-page of this tariff, which bore no printed I. C. C. number, contained the statement: "No supplement to this tariff will be issued, except for the purpose of cancelling the tariff. Additions to, changes in and eliminations from this tariff will be published in loose leaf form." On the same date there was filed with us a "Special supplement to tariffs issued by Southern Pacific Company," the form of which was stated on the title-page thereof to be "permitted by authority of Interstate Commerce Commission Special Permission No. 45950 of May 27, 1918." The title-page of that supplement, which provided for the 25 per cent increase, read in part as follows:

Increase in Freight Rates.

Freight rates named in tariffs and supplements thereto, listed on page 8, are hereby increased to the rates shown \* \* \*.

Tariff No. 730, indicated as I. C. C. No. 8899, was listed on page 8, and the special supplement thereupon became supplement No. 1 to that tariff.

Contained in that intrastate tariff was twenty-fifth revised page 213. Item 1071-E on that page names rates from 16 points in California, including Norman, to San Francisco, and is marked to indicate I. C. C.

cate a "change." In the column headed "Rates in cents per 100 lbs." appears a symbol denoting a reduction in the rate from Capay, one of the 16 points of origin. This was the only change in rates made from the previous revised page, but as the tariff is published in loose-leaf form, the change could only be made by republishing the entire page. Ten other items are contained on that page, and in connection with each the date of the last change made in the respective item is indicated. For example, item 1071-A, which names a rate of 17.5 cents from Citrona to South San Francisco, shows that a change was made therein on January 24, 1918. When the method of publishing this tariff is considered it becomes clear that as to all items on the revised page, except item 1071-E, the rates on the prior revised page are in nowise changed but are merely carried forward. They were not increased, reduced, or changed in any way. And this is true also with respect to the rates from all points named in item 1071-E except Capay. In other words, the only rate affected by the publication of twenty-fifth revised page 213 was the rate from Capay to San Francisco; as to all other rates shown on that page and on twenty-fourth revised page 213, they were "rates in effect on May 25, 1918," and as such were at all times subsequent to June 25, 1918, subject to the 25 per cent increase ordered in general order No. 28.

We find that the rates assessed on the shipments from Citrona and Norman, here considered, were applicable and were not unreasonable. The complaint will be dismissed.

66 I. C. C.

No. 11605.<sup>1</sup>

## COLUMBIA STEEL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ELGIN, JOLIET &  
EASTERN RAILWAY COMPANY, ET AL.

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*Submitted May 23, 1921. Decided January 17, 1922.*

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Rates on fire brick, in carloads, from transcontinental groups A, D, E, and J to San Francisco, Oakland, Emeryville, Pittsburg, and Anderson, Calif., found not unduly prejudicial. Complaint dismissed.

*Melvin E. Van Dine, R. T. Boyd, and Bishop & Bahler* for complainants.

*Fred H. Wood, E. W. Camp, G. H. Baker, C. W. Durbrow, Elmer Westlake, and Frank B. Austin* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

These cases involve the same issues and were heard together. Complainants are Columbia Steel Company and Judson Manufacturing Company, corporations manufacturing steel products at San Francisco, Calif., and Afterthought Copper Company, a corporation smelting ores at Ingot, Calif. They allege that the rates on fire brick, in carloads, from transcontinental groups A, D, E, and J to San Francisco, Oakland, Emeryville, Pittsburg, and Anderson, Calif., were and are unjust, unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe reasonable and non-prejudicial rates for the future and to award reparation on shipments moving on and after August 8, 1916. Rates will be stated in amounts per 100 pounds.

No joint rates are in effect on fire brick to California points from groups A, B, and C, which, roughly described, comprise the territory east of the Indiana-Illinois state line and the Mississippi River south of Cairo, Ill., except the southeastern portion. From points in this territory, the through rates are constructed by combination on group-D points. Complainants abandoned their allegation of

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<sup>1</sup> This report also embraces No. 11605 (Sub-No. 1), Judson Manufacturing Company v. Director General, as Agent, Elgin, Joliet & Eastern Railway Company, et al., and No. 11630, Afterthought Copper Company v. Director General, as Agent, Baltimore & Ohio Railroad Company, et al.

unreasonableness and do not assail the factors east of group D. There remains for consideration only their allegation that the rates from groups D, E, and J to California were and are unduly prejudicial as compared with rates to north Pacific coast points.

Fire brick is used in the construction, repair, and rebuilding of furnaces. Because of the intense heat in these furnaces it is necessary to use high grades of silica, magnesite, and chrome brick, produced chiefly in the eastern and middle states and at Pueblo, Colo. Silica brick is used in the construction of the furnace proper; magnesite brick in the hearth; and chrome brick as a separator between the two other kinds of brick. They are not shipped by water because dampness causes disintegration, although it appears that they may be transported in stock cars without damage. The average value of a carload of fire brick is said to be \$5,000. Complainants compete in the sale of their manufactured steel products with plants located at north Pacific coast points.

The groups of origin to north Pacific coast points and to California points are lettered alike, but the boundaries of the two sets of groups vary considerably, especially in the southwest, as will be seen from the maps at page 282 in *Transcontinental Rates*, 46 I. C. C., 236. Group J is not shown on these maps, but generally speaking it embraces the eastern portion of Colorado except a narrow strip on the eastern border of the state.

Prior to November 15, 1914, a rate of 50 cents applied from groups D to J, inclusive, to California terminals. A like rate applied also to north Pacific coast points from those groups, except group H, from which no commodity rate was published. On that date the lines serving the California terminals increased their rate to 60 cents from groups D to H, inclusive, and to 55 cents from group J. These increases resulted from a readjustment in westbound transcontinental rates, following the decision in *Intermountain Rate Cases*, 234 U. S., 476, which sustained the legality of certain fourth section orders entered by us. There was a considerable movement of fire brick to Arizona smelters, and defendants complied with our orders by increasing the California terminal rates instead of by reducing the intermediate rates. The north Pacific terminal lines continued the 50-cent rate from groups D to G, inclusive; from group J the rate was reduced to 45 cents on April 5, 1916. On March 15, 1918, both the north and south coast lines increased the rates from groups D and E by 5 cents, following our withdrawal of all fourth section relief in *Transcontinental Rates*, *supra*. On June 25, 1918, the rates to both coasts from all groups, except group J to California, were advanced 2 cents pursuant to general order No. 28 of the Director General of Railroads. Through error in tariff publication the rate from group J to California was increased by 7

cents. This error was corrected on October 9, 1918, the rate being made 2 cents higher than that in effect on June 24, 1918. On August 26, 1920, the general increases of 1920 were added to the rates.

Fire brick is rated class E in western classification. The class-E rates in effect prior to August 26, 1920, to Portland, Oreg., and Seattle, Wash., were \$1.19 from group D, \$1.15 from group E, and 91.5 cents from group J. The rates to San Francisco from like lettered groups were \$1.125, \$1.065, and 84.5 cents, respectively. Complainants submitted a list of commodity rates to California points which were the same as or lower than the rates to the north Pacific coast from like lettered groups. Defendants, on the other hand, referred to a few commodity rates which were higher to California than to the north coast. It does not necessarily follow that the rates assailed to California points should have been or should be the same as the rates to the north coast. While higher rates to California than to the north coast are somewhat unusual, the record does not afford a basis for prescribing a different relationship between the groups of origin and points of destination from that which now exists.

Over short-line routes, the distance from Chicago and Danville, Ill., Howards, Mo., and Pueblo, Colo., to San Francisco and Anderson are approximately the same as to Portland and Seattle, Wash., but the direct and rate-making routes to the north coast are over the lines of carriers which serve California indirectly, if at all.

The California terminal lines are parties to tariffs naming the north Pacific coast rates, and can participate in the movement of traffic to that section via certain junctions in close proximity to San Francisco and by way of that port and the Pacific Steamship line to Seattle; but the record indicates that there is no movement to north Pacific coast points via California junctions over those routes. This maintenance of higher rates at intermediate points as to which the haul is not longer than that of the direct lines to north Pacific coast terminals is covered by fourth section orders 4207 and 4211, but since those orders were entered the fourth section has been amended so as to provide that—

if a circuitous rail line or route is, because of such circuitry, granted authority to meet the charges of a more direct line or route to or from competitive points and to maintain higher charges to or from intermediate points on its line, the authority shall not include points as to which the haul of the petitioning line or route is not longer than that of the direct line or route between the competitive points.

The carriers will be expected to revise their rates in accordance with this provision.

We find that the rates assailed were not and are not unduly prejudicial. The complaints will be dismissed.



No. 11936.  
CORAL RIDGE CLAY PRODUCTS COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted July 9, 1921. Decided January 17, 1922.*

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Rates on hollow building tile, in carloads, from Coral Ridge, Ky., to Charleston, S. C., found not unreasonable. Complaint dismissed.

*G. F. Graham and Norman & Graham* for complainant.  
*William Burger* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation, manufacturing building tile at Coral Ridge, Ky., alleges by complaint filed November 5, 1920, that the rates on 141 carloads of hollow building tile shipped from Coral Ridge to Charleston, S. C., between May 31 and November 7, 1918, both inclusive, were unreasonable to the extent that they exceeded the rates on the same commodity from Louisville, Ky., and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

Coral Ridge is 11 miles south of Louisville on the main line of the Louisville & Nashville and is intermediate between Louisville and Charleston. The shipments were consigned to the United States government, and appear to have moved over the Louisville & Nashville to Nashville, Tenn., Nashville, Chattanooga & St. Louis to Atlanta, Ga., Georgia Railroad to Augusta, Ga., Charleston & Western Carolina to Yemassee, S. C., and beyond over the Atlantic Coast Line either direct or in connection with other carriers. On the shipments which moved prior to June 25, 1918, charges were assessed at the applicable combination rate of 20.5 cents, composed of a local commodity rate of 2.5 cents to Louisville and a joint commodity rate of 18 cents beyond. On that date the respective factors were increased to 3 cents and 22.5 cents pursuant to general order

66 I. C. C.

No. 28 of the Director General of Railroads. Charges on the shipments which moved after June 25, 1918, were assessed on the latter basis.

Effective December 5, 1918, at the request of complainant, the Louisville rate was established from Coral Ridge. Defendant's witness testifies that the departure from the long-and-short-haul provision of the fourth section, which existed prior to that date, was protected by an appropriate application.

In support of its allegation of unreasonableness complainant relies upon the lower rate in effect from Louisville which it contends was a maximum reasonable rate, and therefore the higher rate from Coral Ridge, a less-distant point, was without justification. Illustrative of complainant's comparisons are the following rates in effect on January 3, 1921, the date of the hearing, with ton-mile earnings computed on the short-line distance shown:

Haul.	Distance.	Rate.	Revenue per ton-mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
To Charleston, S. C., from—			
Louisville, Ky.....	692.8	28	8.1
Memphis, Tenn.....	719.4	22	6.1
Birmingham, Ala.....	466.3	17.5	7.5
To New Orleans, La., from—			
Knoxville, Tenn.....	608.2	25	8.4
Augusta, Ga.....	651.9	24	7.4
Athens, Ga.....	632.4	24	7.6
Atlanta, Ga.....	593	20.5	6.7

Based upon the distance over the usual route of movement from Louisville, 784 miles, the ton-mile earnings under the rates assailed were 5.2 mills prior to June 25, 1918, and 6.5 mills thereafter.

Complainant's witness testifies that for many years the Louisville basis of rates has been maintained on several other commodities from Coral Ridge, on fire brick and tile from Hoertz, Ky., about 3 miles south of Coral Ridge, and on drain tile and other commodities from Shepherdsville, Ky., about 7 miles south of Coral Ridge.

Defendant contends that these rates were depressed, citing *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, in which authority was granted to continue rates on a great many commodities from Ohio river crossings to Atlantic ports lower than to intermediate points. Defendant shows that the rates on hollow building tile from Coral Ridge and Louisville to Charleston are less than those from the same points to numerous destinations in Alabama and Georgia for distances ranging from 510 to 648 miles; and less than rates on common brick from Cumberland, Md., to Charleston. The value of these comparisons, as well as of those made by complainant, is impaired by failure to show the volume of traffic, if any, between the

other points named. Defendant further compares the rates as-sailed with those effective June 25, 1918, on the same commodity from producing points in official territory, as follows:

Haul.	Distance.	Rate.
From Coral Ridge, Ky., to—	<i>Miles.</i>	<i>Cents.</i>
Charleston, S. C. ....	773	25.5
From St. Louis, Mo., to—		
Rochester, N. Y. ....	787	29
Altoona, Pa. ....	726	30
From Chicago, Ill., to—		
Utica, N. Y. ....	725	25
Binghamton, N. Y. ....	726	22.5
Baltimore, Md. ....	793	24.5
Reading, Pa. ....	766	25.5
From Kendallville, Ind., to—		
Springfield, Mass. ....	787	27.5
New York, N. Y. ....	827	25.5

Upon consideration of all the facts of record we find the rates as-sailed were not unreasonable. The complaint will be dismissed.

66 I. C. C.

No. 12078.<sup>1</sup>

CHARLES C. OYLER &amp; SON

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY AND  
DIRECTOR GENERAL, AS AGENT.

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*Submitted July 5, 1921. Decided January 17, 1922.*

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Charges on sweet potatoes, in carloads, from McKenzie and Paris, Tenn., and on peaches, in carloads, from Woodmont and Johnson's Siding, Md., to Cincinnati, Ohio, not shown to have been based upon excessive weights or to have been otherwise unreasonable. Prayer for establishment of a basis of estimated weights denied and complaints dismissed.

*F. M. Renshaw* for complainant.

*Edward D. Mohr* for Louisville & Nashville Railroad Company;  
*Royal McKenna* for Director General of Railroads in No. 12078; and  
*John F. Finerty* and *Royal McKenna* for defendants in No. 12088.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

These cases were separately heard but present similar issues and will be disposed of in one report. Complainants are Charles C. Oyler and Scott S. Oyler, copartners dealing in fruits and vegetables at Cincinnati, Ohio, under the firm name of Charles C. Oyler & Son. In No. 12078 they allege that unreasonable charges were collected on 14 carloads of sweet potatoes, packed in standard bushel hampers, shipped between January 7 and April 2, 1920, inclusive, from McKenzie and Paris, Tenn., to Cincinnati, in that the scale weights were in excess of actual weights. In No. 12088 they allege that unreasonable charges were collected on two carloads of peaches, packed in bushel baskets, shipped August 21, 1919, from Woodmont and Johnson's Siding, Md., to Cincinnati, in that such charges were based upon an estimated weight not authorized by the tariff and in excess of the proper weight. Complainants ask for reparation and the establishment of estimated weights of 50 pounds per bushel hamper in No. 12078 and 50 pounds per bushel basket in No. 12088.

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<sup>1</sup> This report also embraces No. 12088, Same v. Western Maryland Railway Company, Director General, as Agent, et al.

The sweet potatoes, kiln-dried before shipment, moved over the Louisville & Nashville. The applicable tariffs did not provide for estimated weights. The cars were weighed on track scales at Paris and charges were based on the weights thus obtained. The average weight per bushel hamper varied with the different shipments. According to defendants' exhibits it ranged from 51.72 to 57.46 pounds and was 54.59 pounds on all shipments. Complainants claim that it ranged from 50 to 52.5 pounds, resulting in an aggregate average of 51.6 pounds, upon which their claim for reparation is based. The weights shown by complainants were obtained by having the shipments weighed in wagon loads at destination on scales operated by the Pennsylvania. No evidence was offered concerning the condition of these scales or of the circumstances connected with the weighing. Only a part of the hampers contained in three of the cars were thus weighed, and apparently the total weight of these carloads is estimated from the part so weighed.

Defendants' witness testifies that on all other shipments of sweet potatoes from points on the Louisville & Nashville in Tennessee and Alabama to Cincinnati during the first four months of 1920 the average weight per bushel hamper was 54.4 pounds, or practically the same as the average on the shipments here considered, and that no claims on account of overweight have been filed on any of those shipments. Defendants point out that the tariffs authorized a demand for reweighing at destination, without charge if the weights were found to be erroneous, and that no such demand was made. Complainants assert that because of delay in receiving the expense bills they were not advised of the carriers' weights in time to demand reweighing. Freight charges must ordinarily be paid prior to or upon delivery of the freight, and the consignee is then advised as to the weight. Where the carriers are authorized to make delivery prior to payment of the charges, a statement of the weight may be demanded when delivery is taken.

Defendants show that the cars were weighed while at rest, coupled, and under favorable weather conditions, by the Southern Weighing and Inspection Bureau at Paris, whose original weight reports were offered in evidence. Sworn reports of defendants' inspector of scales were submitted, showing that these scales were tested and found in good order on January 6, 1920. On April 2, 1920, when again tested, the pivots were found to be slightly worn, but defendants assert that this condition would not result in inaccurate weights. We have repeatedly referred to the inaccuracies which often result from weighing cars while coupled, but the record here does not warrant substitution of the weights claimed by complainants for the track scale weights.

In support of the request for the establishment of the estimated weight asked, complainants state that the laws of Tennessee require a weight of 50 pounds as the standard bushel of sweet potatoes; that prior to 1919 defendants' tariffs provided for that weight; and that it was later increased to 57 pounds. A check of the tariffs back to January 1, 1917, shows no provision for an estimated weight on this commodity from and to the points in question.

Defendants object to the establishment of an estimated weight, mainly because of the wide variations found to exist in actual weights of sweet potatoes shipped in containers of the same size and form, because of differing climatic conditions and methods of packing, and insist that it is impracticable to establish a reasonably accurate estimated weight. They show that all carload shipments of sweet potatoes in standard bushel hampers during the first four months of 1920 from points on the Louisville & Nashville to Cincinnati, except the shipments here considered, averaged from 47.5 to 69.3 pounds per hamper. Defendants' witness testified that sweet potatoes are grown in every state in the south through which the Louisville & Nashville operates; that they vary in size, shape, and quantity of moisture; that some are kiln-dried before shipment and others are not, which makes a material difference in the weight per hamper, and that none of the southern lines provides for an estimated weight. They further show that the standard weight per bushel prescribed by the laws of 39 states ranges from 46 to 60 pounds.

The points of origin in No. 12088 are on the Western Maryland and the shipments moved over that line and the Baltimore & Ohio. Charges were assessed on a weight of 60 pounds per bushel. The tariffs governing these shipments likewise did not provide for an estimated weight. A number of the baskets of peaches were weighed on platform scales by defendants' agent at Pearre, Md., apparently the billing point for shipments originating at Woodmont and Johnson's Siding, and were found to weigh from 60 to 65 pounds each. Based upon these results the weight of 60 pounds per basket was fixed for the two carloads shipped. Reparation to the basis of an estimated weight of 50 pounds per bushel basket is asked.

Although the method here employed was a departure from the practice ordinarily followed by carriers in ascertaining carload weights, complainants did not weigh the shipments at destination and offered no substantial evidence to show that the weight upon which the charges were assessed was incorrect. It is stated that peaches are usually shipped in bushel baskets; that the estimated weight asked is the weight fixed by the city of Baltimore, Md.; and that other shipments were made from points in Maryland during the year 1919 on which charges were assessed upon this basis.

Defendants concede that this basis was employed on shipments moving from and to these points prior to May 25, 1919, but neither during that period nor since have the tariffs contained authority therefor. Complainants refer to a Pennsylvania tariff governing shipments from the same territory, which at one time authorized an estimated weight of 50 pounds per bushel crate, but it appears that this provision has been canceled. In *Fruits and Vegetables*, 43 I. C. C. 291, we found justified a proposed increase from 22.5 to 29 pounds in the estimated weight of peaches, in half bushel units, to apply in an extensive territory, largely from points in the south to territory north of the Ohio and Potomac rivers.

The facts of record do not establish that estimated weights on either sweet potatoes or peaches moving from and to the points under consideration are necessary or should be required, nor does it appear that the weights which complainants seek would fairly represent the actual weights. We find that the charges assailed were not unreasonable and that the record does not warrant the relief asked for the future.

The complaints will be dismissed.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1372.  
MERIDIAN RATE CASE.

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*Submitted December 22, 1921. Decided January 25, 1922.*

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Class and commodity rates between Meridian, Miss., Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., on the one hand, and certain points in Alabama within 200 miles of Meridian, on the other, proposed in compliance with our order in *Meridian Traffic Bureau v. S. Ry. Co.*, 60 I. C. C., 5, found justified, with certain exceptions.

*Charles J. Rixey and W. N. McGehee* for respondents.

*R. G. Cobb, Morgan Richards, Marion Rushton, O. L. Bunn, M. M. Caskie, J. H. Aldredge, R. M. Jones, A. J. Young, S. P. Gaillard, B. M. Angell, W. W. Seay, W. R. Seifert, J. J. Martin, B. R. Sheperd, J. D. Oliver, and C. W. Hayward* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS EASTMAN, POTTER, AND CAMPBELL.

EASTMAN, *Commissioner*:

In *Meridian Traffic Bureau v. S. Ry. Co.*, 60 I. C. C., 5, hereinafter referred to as the *Meridian Case*, the complaint was that the maintenance of relatively higher rates between Meridian, Miss., and points in Alabama than apply within that state on like traffic subjects Meridian and its industries to undue prejudice and disadvantage. Not all the carriers operating in Alabama were made defendants, but only the Southern, the Alabama Great Southern, the Mobile & Ohio, and the Alabama, Tennessee & Northern. The latter, which will hereinafter be called the Tennessee & Northern, is a short line wholly within Alabama, paralleling and near to the western boundary of the state. The three other defendants serve Meridian directly. The map on page 8 of the report in the *Meridian Case* gives a general outline of the situation.

We found that Meridian was subjected to undue prejudice; but while the complaint was broad enough to cover rates to or from all points in Alabama served by defendants, we also found that this undue prejudice would be corrected if relief were confined to points in Alabama not more than 200 miles distant from Meridian, and that the latter's competition at these points came chiefly from Birmingham, Tuscaloosa, Selma, Demopolis, Mobile, and Montgomery, Ala., hereinafter referred to as the Alabama cities. Accordingly our



order in the *Meridian Case* required defendants Southern, Alabama Great Southern, and Mobile & Ohio to cease and desist from—

publishing, demanding, or collecting for the transportation of property between Meridian, Miss., and points in Alabama on their respective lines not more than 200 miles distant from Meridian by way of their respective lines, any higher rates than they contemporaneously maintain and apply on like traffic for like distances between Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., on the one hand, and points in Alabama on their respective lines not more than 200 miles distant from Meridian by way of their respective lines, on the other.

All the defendants were likewise required, according as they participated in the traffic, to cease and desist from—

publishing, demanding, or collecting for the transportation of property between Meridian, Miss., and points on the Alabama, Tennessee & Northern Railroad any higher rates than they contemporaneously maintain and apply on like traffic for like distances between Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., on the one hand, and points on the Alabama, Tennessee & Northern Railroad, on the other.

In removing the undue prejudice the Southern, Alabama Great Southern, and Mobile & Ohio were required to establish rates on their respective lines which should not exceed the rates under certain class and commodity distance scales set forth in Appendix 6 of our report. The scales prescribed for the Mobile & Ohio were approximately 10 per cent higher than for the other two roads. Still higher maximum rates were prescribed to and from points on the Tennessee & Northern. In all cases the maximum rates prescribed were subject to the general increases of 1920.

The defendants in the *Meridian Case* are respondents in the present proceeding. By schedules filed to become effective during August and September, 1921, they propose revised class and commodity rates between Meridian and the Alabama cities, on the one hand, and various points in Alabama on their respective lines, on the other, purporting to comply with our order in the *Meridian Case*. Upon protest by the Mobile Chamber of Commerce and other interested parties, we suspended certain of the schedules until November 29 and the remainder until December 13, 1921. Subsequently, upon respondents' request, the effective dates were in all cases further postponed until February 27, 1922.

The fact that only four of the carriers in Alabama were defendants in the *Meridian Case* and the further fact that our order therein was subject to a distance limit have led to complications. Because of the discriminations and maladjustments in intrastate rates which they said would follow compliance with the order, defendants, in a petition for rehearing, asked that its effective date be indefinitely postponed pending a general investigation, which they wished us to institute, of

the entire intrastate rate structure of Alabama. This petition was denied. The complaint in the *Meridian Case* was filed in March, 1917, but it was not until after our decision in December, 1920, that defendants stressed the complications which would ensue from failure to join other lines or from limitation of the relief to a 200-mile zone. It has been shown that Meridian is suffering from undue prejudice, and it is entitled to relief without further delay. Such maladjustments of intrastate traffic as may follow compliance with our order can be dealt with by the Alabama Public Service Commission or, in case of discrimination against interstate commerce, by us. Such action as we now take is directed to the exigencies of the immediate situation and is without prejudice to possible subsequent proceedings of broader scope, or to the right of any interested party to apply to us for a modification of our findings and order as to any intrastate rate on the ground that such rate is not so related to the interstate rates to and from Meridian as to contravene the provisions of the interstate commerce act.

In our report in the *Meridian Case*, it was recognized that we were dealing with one phase only of a general situation. On page 23 we said:

Indications multiply that the entire structure of interstate and intrastate rates in the south is likely to become the subject of future investigation and consideration. Under all the circumstances, we agree with interveners that it would be unfortunate if we should now attempt, upon the restricted record of this case, to work out carefully balanced scales of short-distance class and commodity rates which could be used as the "criterion" for further reconstruction in the southern territory. On the other hand, complainant has clearly shown that the city of Meridian is now subjected to undue prejudice and the removal of that prejudice is a matter which should no longer be delayed. The immediate problem, therefore, is to effect such readjustment as the present record appears to justify, without undue influence upon any more extensive process of rate reconstruction which may later prove desirable in connection with a consideration of the southern situation as a whole.

We further said that the class rates prescribed were "adopted to meet the immediate needs of the situation before us rather than as a model for future and more extensive rate adjustments."

Protestants contend that certain of the suspended rates do not conform to our order and that they are in general unreasonable and unduly prejudicial to the Alabama cities. We shall first consider the alleged violations of the order. Rates will be stated in cents per 100 pounds unless otherwise indicated. For convenience, points on respondents' lines in Alabama within 200 miles of Meridian will be referred to as Meridian territory.

It was shown in the *Meridian Case* that traffic between Meridian and Alabama points moves largely under class rates while similar traffic within Alabama usually moves under commodity rates which

are relatively much lower. In Appendix 6 we prescribed maximum distance scales for 65 separate groups of commodities, but these groups do not include all the articles that move within Alabama under commodity rates. Under the suspended schedules respondents propose to apply class rates to all articles not listed in these groups. Certain protestants question the propriety of this action, upon the ground that these commodities were not specifically named because the evidence as to them was insufficient to support a finding of undue prejudice. This contention we can not sustain. Except for the subsequent modification eliminating coal and coke, our order applies to "property" generally. We did not prescribe maximum commodity rates on articles not included in the 65 commodity groups, because the evidence failed to show that such articles are entitled to lower than class rates.

As aforesaid, defendants in the *Meridian Case* were required, in the case of joint traffic to and from Tennessee & Northern points, to cease and desist from publishing higher rates between Meridian and such points than for "like distances" between the Alabama cities and such points. Since the maximum distance between Meridian and any point on the Tennessee & Northern is 136 miles, respondents do not propose to change existing rates between the Alabama cities and stations on that line where the distance is in excess of 136 miles. This results in certain incongruities. The proposed class rates from Mobile to Sims Chapel, Ala., for example, a distance of 47 miles, range from 2 cents higher on class D to 17.5 cents higher on third class than the present rates for 177 miles from Selma to the same point, in which no changes are proposed. The proposed rate on agricultural implements, in carloads, from Mobile to Sims Chapel is 30.5 cents, as compared with the present rate of 20.5 cents from Selma. These examples are typical. They are not in conflict with our order in the *Meridian Case*, but the evidence now before us warrants an extension of that order. We find that the class rates and the commodity rates, other than those applicable on coal, coke, and naval stores of respondents between Meridian and points on the Tennessee & Northern are and for the future will be unduly prejudicial to Meridian and unduly preferential of Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa to the extent that the rates maintained by respondents between Meridian and points on the Tennessee & Northern exceed, relative distances considered, the rates contemporaneously maintained by them on like traffic between the Alabama cities named and said points on the Tennessee & Northern.

Respondents have published a rule in the suspended schedules which would require the increased rates to and from the Alabama

cities to be used as factors in constructing combination rates from and to points in Alabama not within the scope of our order. The effect of this rule would be to increase the rates between Meridian territory and all points in Alabama located on lines other than those of respondents, where the through rates are based on combinations to and from the Alabama cities. No increases in such rates have been authorized by us. The rule mentioned, however, affects only intrastate traffic, and we do not pass upon the question whether increases so accomplished are lawful.

Other alleged violations of our order will be discussed later in connection with the consideration of the proposed rates to and from Tennessee & Northern points.

Before proceeding to particular consideration of the proposed class and commodity rates, certain general contentions of the protestants will be stated. They allege that the entire proposed adjustment will create many discriminatory and prejudicial situations intrastate, and urge as an alternative that the Alabama intrastate basis of rates be extended to Meridian. This would be possible under our order in the *Meridian Case*, but however expedient such action might be, at least as a temporary measure, respondents have the right under that order to adopt the higher maximum rates prescribed. To the general maladjustments of intrastate traffic which may result we have already adverted, but there are particular matters in this connection which merit discussion.

Protestants are chiefly concerned with the commodity rate adjustment. Much of their evidence is of a general character, designed to illustrate the results which would follow approval of the suspended schedules. They show that in numerous instances the suspended rates from the Alabama cities to given destinations in Alabama would be higher than intrastate rates not affected by our order from the same points of origin to points beyond those destinations over the same line of railroad. These instances they characterize as fourth section violations, but inasmuch as they would exist only in connection with intrastate traffic they would not constitute violations of the interstate commerce act.

Protestants show also that the suspended rates would produce other inequalities as between various Alabama jobbing and consuming points. The present rates between Mobile and Selma are the same via the Southern and the Louisville & Nashville, both of which serve those points. Approval of the suspended rates would disrupt this adjustment. The rates of the Southern are within the scope of our order in the *Meridian Case*, but those of the Louisville & Nashville are not. The situation is the same between Birmingham and Selma, where the Louisville & Nashville, in connection with the

Western Railway of Alabama, competes with the short line of the Southern. Similar maladjustments, it is said, would be created between other less important Alabama points, where respondents compete with lines that were not defendants in the *Meridian Case*. Respondents urge that the scope of our order in that case be extended to include all other Alabama points and carriers, or else that they be permitted to meet the competition of the Louisville & Nashville between Mobile and Selma, and between Birmingham and Selma. The first alternative it is not possible to adopt in this proceeding, but it does not appear that the adoption of the second would be injurious to Meridian. On the present record we find, therefore, that the maintenance by respondents of class and commodity rates between Mobile and Selma and between Birmingham and Selma that are no higher than the rates contemporaneously maintained on like traffic between those points on lines not defendants in the *Meridian Case* is not unduly preferential of such points or unduly prejudicial to Meridian. The record affords no adequate basis for a similar finding with respect to rates to and from other points where similar competition is said to exist.

The proposed revision of intrastate rates in Alabama is limited to rates applying to and from the six Alabama cities specified in our order. As intrastate commodity rates in Alabama are in general lower than the maxima prescribed by our order, the suspended schedules would disrupt the relationship of rates now existing between these cities and destinations in Meridian territory, on the one hand, and between other Alabama jobbing points and the same destinations, on the other. For example, the rates between Birmingham and other points in Alabama generally apply also from and to points located in what is known as the Birmingham group, including Ensley and Bessemer. The last-mentioned point is intermediate, Meridian to Birmingham. As our order in the *Meridian Case* applies to Birmingham, but not to the Birmingham group as a whole, its enforcement would result in higher rates between Birmingham and points in Meridian territory than are contemporaneously in effect between such points and other stations in the Birmingham group. Our finding of undue prejudice in the *Meridian Case* was limited to the six cities as to which the proof of undue prejudice was ample and convincing. The record in this proceeding is not sufficient to justify an extension of that finding.

In some instances the present class and commodity rates applicable between certain of the Alabama cities and Tennessee & Northern stations are relatively higher than the maximum rates prescribed by us in the *Meridian Case* between Meridian and destinations on

the Tennessee & Northern. In complying with our order, respondents undertook merely to revise the rates between the Alabama cities and Tennessee & Northern stations to the extent of making them no lower for corresponding distances than the rates between Meridian and the same destinations. Respondents are willing to reduce these rates, where they are higher, to the basis prescribed by us to and from Meridian, and this should be done.

CLASS RATES OF THE SOUTHERN, ALABAMA GREAT SOUTHERN, AND MOBILE  
& OHIO.

The present class-rate scale of the Alabama Great Southern between Meridian and Alabama points also applies intrastate within Alabama, with certain exceptions. The similar scales of the Southern are, on the whole, slightly higher. For the purpose of removing the prejudice found to exist in the *Meridian Case*, we prescribed a maximum scale of class rates for application between Meridian and the Alabama cities and points in Meridian territory, over the lines of the Southern and Alabama Great Southern, respectively, which is identical with the existing scale of the Alabama Great Southern, except that for classes C and D the rates prescribed by us are lower. The maximum class-rate scale prescribed for the Mobile & Ohio was 10 per cent higher.

At the hearing in this proceeding the Southern, Alabama Great Southern, and Mobile & Ohio submitted single-line scales of class rates which they ask us to approve for application over their respective lines in lieu of the suspended rates. These scales have been submitted by respondents and other carriers to the state commissions of Alabama and Georgia in proceedings instituted by those commissions concerning intrastate rates. These substitute scales are somewhat higher on the average than the scales which we prescribed, and respondents contend that they are more logically and scientifically constructed.

On the other hand, the Meridian interests ask us to approve for application between Meridian and Meridian territory the scales prescribed in our former order without the general increase of 25 per cent authorized by us on July 29, 1920.

In our report in the *Meridian Case* we stated, as has already been indicated, that "it would be unfortunate if we should now attempt, upon the restricted record of this case, to work out carefully balanced scales of short-distance class and commodity rates which could be used as the 'criterion' for further reconstruction in the southern territory." It is quite possible that in subsequent proceedings of broader scope, or after the investigations now being prosecuted by

the Alabama and Georgia commissions have been completed, it will be desirable to modify somewhat the rates which we have prescribed to meet the immediate needs of the situation under consideration. We are not persuaded, however, that such modifications should be made at the present time and upon the basis of the present record. The class rates of the Southern, Alabama Great Southern, and Mobile & Ohio which are under suspension are in conformity with our order in the *Meridian Case*, and, as shown in respondents' exhibits, they compare favorably with numerous class-rate scales effective in southeastern territory. So far as they are within our jurisdiction, we find that they have been justified.

COMMODITY RATES OF THE SOUTHERN, ALABAMA GREAT SOUTHERN, AND  
MOBILE & OHIO.

Numerous comparisons bearing upon the reasonableness of the commodity rates prescribed by us in the *Meridian Case* were submitted by both protestants and respondents, and in certain instances, as in the case of class rates, respondents offered substitute scales for our consideration. Protestants are primarily interested in the rates on commodities that move in substantial volume.

*Fertilizer and fertilizer materials.*—Protestants claim that the suspended rates on fertilizer and fertilizer materials, in carloads, are unreasonable. The complainant in the *Meridian Case* asked that rates be established on fertilizer between Meridian and Alabama points on basis of a scale prescribed in *Royster Guano Co. v. A. C. L. R. R. Co.*, 50 I. C. C., 34. We found that transportation conditions in the territory here involved do not warrant the application of so low a basis as that in force from Norfolk to points in North Carolina, and prescribed for application on the Southern the scale of rates contemporaneously in effect on the Alabama Great Southern; and, as in the case of other class and commodity rates, we prescribed a basis 10 per cent higher for application on the Mobile & Ohio. The suspended rates of the Southern and Alabama Great Southern are the same as the present rates under the scale prescribed in *Royster Guano Co. v. A. C. L. R. R. Co.*, *supra*, for distances up to 100 miles, but are slightly higher for greater distances. Respondents ask us to approve in lieu of the rates under suspension a substitute scale which provides somewhat lower rates, except for distances of 10 to 15 miles and 35 to 75 miles, inclusive.

As shown in the following table of rates, stated in cents per net ton, the reductions that would result from the adoption of the substitute scale are greater in number and in amounts than the increases,

and, on the whole, it appears to be more consistent and better graded than the suspended scale:

Distance.	Sus- pended rates.	Substitute rates.	Distance.	Sus- pended rates.	Sub- stitute rates.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
5 miles.....	113	100	80 miles.....	260	260
10 miles.....	113	120	85 miles.....	263	260
15 miles.....	125	140	90 miles.....	263	260
20 miles.....	163	150	95 miles.....	275	270
25 miles.....	175	160	100 miles.....	288	270
30 miles.....	175	170	110 miles.....	300	280
35 miles.....	175	180	120 miles.....	313	290
40 miles.....	188	190	130 miles.....	325	300
45 miles.....	200	200	140 miles.....	338	310
50 miles.....	200	210	150 miles.....	350	320
55 miles.....	213	220	160 miles.....	350	330
60 miles.....	225	230	170 miles.....	363	340
65 miles.....	225	240	180 miles.....	363	350
70 miles.....	238	240	190 miles.....	375	360
75 miles.....	238	250	200 miles.....	388	370

We find that the suspended rates on fertilizer and fertilizer materials, in carloads, have not been justified and that rates on these commodities not exceeding those shown in the substitute scale set forth in the next preceding table are, and for the future will be, just and reasonable for single-line application by the Southern and the Alabama Great Southern between Meridian and points in Meridian territory as hereinbefore described.

*Cotton in bales.*—The suspended rates of the Southern and Alabama Great Southern on cotton, in bales, any quantity, between Meridian and Alabama points, while lower than the present rates of the Southern between the same points, are the same as the present intrastate rates within Alabama of the Southern and Alabama Great Southern. The Alabama protestants urge that these rates be reduced to meet the scale of the Southern applicable between points in North Carolina and points in South Carolina. Respondents show that the movement and consumption of cotton is greater in the Carolinas than in Alabama and Georgia; and that, for the shorter hauls, truck competition, which is more common and severe in the Carolinas than in Alabama, has depressed the rate structure in that section. They compare the suspended rates with higher rates of the Yazoo & Mississippi Valley from points in Mississippi to Memphis, Tenn., under which there is a very substantial movement of cotton. Respondents offer a substitute scale which would provide somewhat lower rates for short hauls than the rates under suspension, but would increase the rates for longer distances. The suspended rates are on substantially the same level as those approved in *Georgia Rates*,  
66 I. C. C.



*Fares, and Charges*, 60 I. C. C., 527, and the present record does not warrant our approval of a different basis.

*Cement.*—The Gulf States Portland Cement Company, which manufactures cement at Spocari, Ala., a point on the Southern about 2 miles east of Demopolis and about 56 miles from Meridian, complains of the suspended rates on cement, in carloads, from that point to Meridian, Mobile, Birmingham, Selma, and Demopolis, as compared with rates on the same commodity to the same destinations from competing cement-producing points, viz, North Birmingham, Leeds, and Ragland, Ala., Richard City, Tenn., Rockmart, Ga., and Kosmosdale, Ky. Our order in the *Meridian Case* required no revision of the intrastate rates from North Birmingham, Leeds, and Ragland to the destinations named. Since the instant case was heard the rates from Leeds and Ragland to Meridian and from Richard City, Rockmart, and Kosmosdale to Meridian and Mobile have been revised in conformity with our decision in *Memphis Southwestern Investigation*, 55 I. C. C., 515. Present and suspended rates from Spocari are compared below with the present rates from other points named:

To Mobile from—	Distance.	Rate.	To Meridian from—	Distance.	Rate.
	Miles.	Cents.		Miles.	Cents.
Spocari:			Spocari:		
Suspended rate.....	184	17.5	Suspended rate.....	56	12
Present rate.....	184	10	Present rate.....	56	10
Leeds, present rate.....	285	12.5	Leeds, present rate.....	170	17
Ragland, present rate.....	318	12.5	Ragland, present rate.....	199	18
Rockmart, present rate.....	356	22	Rockmart, present rate.....	271	19
Richard City, present rate.....	446	22	Richard City, present rate.....	327	21
Kosmosdale, present rate.....	642	26	Kosmosdale, present rate.....	541	24

The present rates from North Birmingham, Leeds, Ragland, Richard City, and Rockmart to Birmingham, Selma, and Demopolis are in general much lower, relative distances considered, than the proposed rates from Spocari to these points. Respondents urge that as the cement rates from Rockmart and Richard City to common points in the southeast have not been revised to conform to the fourth section of the act, rates from those points to Selma and Birmingham are subnormal. They show that the suspended rates compare favorably with the present rates on cement from Memphis to points on the Illinois Central and St. Louis-San Francisco from New Orleans, La., to points on the Illinois Central and New Orleans & Northeastern, and with certain scales prescribed by us in *Western Cement Rates*, 48 I. C. C., 201; 52 I. C. C., 225.

The schedules under suspension provide for the cancellation of joint rates on cement from Spocari to Birmingham and Mobile applicable via the Southern and connecting lines. Our order in the

66 I. C. C.

*Meridian Case* does not apply to joint rates and hence it affords no justification for such action.

It was not intended that our order in the *Meridian Case* should be broader than necessary to effect removal of the undue prejudice against that point. Upon further consideration of the facts, it appears that in respect of carload rates on cement from Spocari enforcement of the order would result in no benefit to Meridian and that, on the other hand, it would subject Spocari to disadvantage in competing with the other cement-producing points named. Meridian does not produce cement, and its outbound cement traffic, like that of the Alabama cities, consists principally, if not wholly, of less-than-carload lots to local points. Its jobbers receive a portion of their cement from Spocari and upon such shipments they would be subjected to increased rates. Since corresponding increases are not proposed in the rates from North Birmingham, Leeds, and Ragland to the competing Alabama cities, it appears that the disadvantage of Meridian jobbers would be increased rather than diminished by permitting the proposed rates from Spocari to become effective. We accordingly find that they have not been justified, and that the maintenance by respondents of relatively lower rates on cement, in carloads, from Spocari to Mobile, Birmingham, Selma, and Demopolis than they contemporaneously maintain on like traffic from Meridian to the same points is not unduly preferential of the Alabama cities named or unduly prejudicial to Meridian.

*Live stock.*—The suspended scale of the Southern and Alabama Great Southern, applicable on horses and mules, carload, subject to a minimum of 23,000 pounds, is somewhat higher for shorter distances and slightly lower for longer distances than the scale prescribed by us in *Hudson Mule Co. v. L. & N. R. R. Co.*, 63 I. C. C. 6, for general application in the southeast. The suspended rates on cattle are the same as those on horses and mules, but are subject to a minimum of 20,000 pounds. Respondents are now engaged in a revision of rates on horses and mules to conform to our findings in *Hudson Mule Co. v. L. & N. R. R. Co.*, *supra*, and they suggest that the suspended rates on horses and mules be modified to conform to that scale, which, generally speaking, will result in reductions, and that the same scale be applied on cattle, subject, however, to the lower minimum. We find that the suspended rates on horses, mules, and cattle, in carloads, have not been justified and that rates not exceeding those on horses and mules, in carloads, prescribed in *Hudson Mule Co. v. L. & N. R. R. Co.*, *supra*, are, and for the future will be, just and reasonable for application on horses and mules, in carloads, minimum 23,000 pounds, and on cattle, in car-

loads, minimum 20,000 pounds, between Meridian and points on the Southern, the Alabama Great Southern, and the Mobile & Ohio in Meridian territory as hereinbefore described.

*Lumber.*—Respondents show that the suspended rates of the Southern and Alabama Great Southern on lumber, in carloads, are in general lower than the interstate scales of the Alabama Great Southern; the interstate rate scales of the Southern applicable on its line between points east and west of Atlanta; and numerous specific rates for corresponding distances prescribed by us in other cases. As shown in the following table, the substitute scale which respondents, including the Mobile & Ohio, ask us to approve, provides rates for all distances that are the same as or lower than those under suspension:

Distance.	Suspend- ed rates.	Substi- tute rates.	Distance.	Suspend- ed rates.	Substi- tute rates.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
5 miles.....	5.5	5	80 miles.....	12.5	11.5
10 miles.....	6.5	5.5	85 miles.....	13	12
15 miles.....	7	6	90 miles.....	13	12
20 miles.....	7.5	6.5	95 miles.....	14	12.5
25 miles.....	8	7	100 miles.....	14	12.5
30 miles.....	9	7.5	110 miles.....	14.5	13
35 miles.....	9	8	120 miles.....	15	12.5
40 miles.....	9.5	8.5	130 miles.....	15.5	14
45 miles.....	9.5	9	140 miles.....	16.5	14.5
50 miles.....	10	9.5	150 miles.....	17	15
55 miles.....	10	10	160 miles.....	17.5	15.5
60 miles.....	11.5	10.5	170 miles.....	18	16
65 miles.....	12	11	180 miles.....	19	16.5
70 miles.....	12	11	190 miles.....	19.5	17
75 miles.....	12.5	11.5	200 miles.....	20	17.5

We find that the suspended rates on lumber and articles taking the same rates or rates basing thereon, in carloads, have not been justified and that rates on lumber, in carloads not exceeding those named in the substitute scale shown in the next preceding table are, and for the future will be, just and reasonable for single-line application between Meridian and points on the Southern, the Alabama Great Southern, and the Mobile & Ohio in Meridian territory as hereinbefore described.

*Brick.*—The suspended rates on brick, in carloads, are lower than the present scale of rates applicable on the same commodity between points in central territory, which is before us in Docket No. 10733, *National Paving Brick Mfrs. Asso. v. Director General*. Respondents call attention to the fact that in central territory traffic density is greater and the general level of rates is lower than in southeastern territory.

Respondents' exhibits show that the suspended rates are in general no higher than those provided in various other interstate scales of

the Southern and Alabama Great Southern. They offer, however, a substitute scale which compares with the suspended rates as follows:

Distance.	Suspend- ed rates.	Substi- tute rates.	Distance.	Suspend- ed rates.	Substi- tute rates.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
5 miles.....	5	5	80 miles.....	9	8.5
10 miles.....	5.5	5	85 miles.....	9.5	9
15 miles.....	5.5	5.5	90 miles.....	9.5	9
20 miles.....	6.5	5.5	95 miles.....	9.5	9.5
25 miles.....	6.5	6	100 miles.....	10	9.5
30 miles.....	7	6	110 miles.....	10	10
35 miles.....	7	6.5	120 miles.....	10.5	10.5
40 miles.....	7.5	6.5	130 miles.....	10.5	11
45 miles.....	7.5	7	140 miles.....	11.5	11.5
50 miles.....	7.5	7	150 miles.....	11.5	12
55 miles.....	8	7.5	160 miles.....	12	12
60 miles.....	8	7.5	170 miles.....	12	12.5
65 miles.....	8	8	180 miles.....	12.5	12.5
70 miles.....	9	8	190 miles.....	12.5	13
75 miles.....	9	8.5	200 miles.....	13	13

The rates provided by the substitute scale are the same as or lower than the suspended rates for distances under 130 miles, and in those instances where they are higher for longer distances the difference does not exceed 0.5 cent. The rates in the substitute scale for distances of 5 and 200 miles are the same as those in the scale under suspension, but the former scale has a more consistent rate of progression than the latter.

We find that the suspended rates on brick, in carloads, have not been justified and that rates not exceeding those named in the substitute scale set forth in the next preceding table, are and for the future will be, just and reasonable for single-line application between Meridian and points on the Southern and the Alabama Great Southern in Meridian territory as hereinbefore described.

*Other commodities.*—The evidence relating to the rates of the Southern, Alabama Great Southern, and Mobile & Ohio on other specific commodities need not be detailed. As previously stated, our order in the *Meridian Case* provided that for single-line hauls of the Mobile & Ohio, within the prescribed territory, the commodity rates specified should be 10 per cent in excess of similar rates prescribed for single-line application on the Southern and Alabama Great Southern. The propriety of this relationship appears to be quite generally conceded.

We find that the suspended commodity rates of the Southern and the Alabama Great Southern have been justified, with the exceptions hereinbefore stated. We further find that the suspended rates of the Mobile & Ohio have been justified, except as hereinbefore found in respect of rates on horses, mules, cattle, and lumber, in carloads, and except in so far as they exceed by more than 10 per cent the rates herein found reasonable for application on like traffic for cor-

responding distances by the Southern and the Alabama Great Southern. The schedules naming rates which we have found not justified will be ordered canceled, and respondents will be required to establish rates on the commodities involved in accordance with our findings herein.

CLASS AND COMMODITY RATES TO AND FROM TENNESSEE & NORTHERN POINTS.

With the exception of rates on lumber and some individual rates on certain other commodities, it appears that the suspended rates to and from points on the Tennessee & Northern are on the bases prescribed in the *Meridian Case*. Our order in that case prescribed joint rates on agricultural implements, building material, and cotton seed, in carloads, between Meridian and stations on the Tennessee & Northern by way of the Southern and Alabama Great Southern and, with these exceptions, provided that the class and commodity rates to and from Meridian should not exceed the combinations on junction points. It further provided that the Meridian rates should be no higher than those of the Alabama cities for like distances.

Protestants contend that the suspended rates on certain classes and commodities, particularly lumber, naval stores, fertilizer, cotton, brick, lime, plaster, cement, and sewer pipe, in carloads, are unreasonable.

Respondents admit that the suspended rates on lumber between Mobile and Tennessee & Northern points were not published in conformity with our order in the *Meridian Case*. In recognition of the highly competitive character of lumber traffic, they now propose the following scale of rates on that commodity, in carloads, for application between Meridian, Mobile, and the other Alabama cities, on the one hand, and Tennessee & Northern stations, on the other:

Haul.	Rate.	Haul.	Rate.
	<i>Cents.</i>		<i>Cents.</i>
40 miles and under .....	12	140 miles and over 130 miles .....	17
50 miles and over 40 miles .....	12.5	150 miles and over 140 miles .....	17.5
60 miles and over 50 miles .....	13	160 miles and over 150 miles .....	18
70 miles and over 60 miles .....	13.5	170 miles and over 160 miles .....	18.5
80 miles and over 70 miles .....	14	180 miles and over 170 miles .....	19
90 miles and over 80 miles .....	14.5	190 miles and over 180 miles .....	19.5
100 miles and over 90 miles .....	15	200 miles and over 190 miles .....	20
110 miles and over 100 miles .....	15.5	210 miles and over 200 miles .....	20.5
120 miles and over 110 miles .....	16	220 miles and over 210 miles .....	21
130 miles and over 120 miles .....	16.5		

The joint rates thus proposed for two-line hauls, while higher than the suspended rates of the Southern and Alabama Great Southern for single-line hauls, are materially lower than the present and suspended rates between Meridian and Tennessee & Northern stations and the suspended rates between Mobile and such stations for

like distances; in some instances they are the same as, in others slightly higher than, the present rates between Mobile and such stations.

We find that the suspended rates on lumber, in carloads, between Meridian and points on the Tennessee & Northern have not been justified, and that rates not exceeding those set forth in the next preceding table, are, and for the future will be, just and reasonable for application on that commodity between said points.

The Tennessee & Northern factor of the present combination rates on naval stores, viz, rosin, in bulk or in barrels, any quantity, and on turpentine, spirits of turpentine, or wood turpentine, in barrels, any quantity, or in tank-car loads, between points on that carrier's line and Meridian is on a class basis, but joint commodity rates are in effect on these commodities from the same points to Mobile. The suspended schedules would materially increase the rates between Tennessee & Northern stations and Mobile. The evidence indicates that these commodities are not now handled to or from Meridian in carload quantities and that there is no immediate prospect of such movement. Mobile, on the other hand, is a concentration point for the exportation and reshipment of naval stores, in competition with Savannah, Ga., Pensacola, Fla., and other ports, with which its rates are aligned. We accordingly find that the maintenance by respondents of relatively higher rates on these commodities between Meridian and points on the Tennessee & Northern than they contemporaneously maintain between such points and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, is not unduly prejudicial to Meridian and unduly preferential of the Alabama cities named.

The present and suspended rates on fertilizer, in carloads, between Mobile and Meridian, on the one hand, and representative points on the Tennessee & Northern, on the other, are shown in the subjoined statement:

	Mobile.			Meridian.		
	Distance.	Present rates.	Suspended rates.	Distance.	Present rates.	Suspended rates.
	Miles.	Cents.	Cents.	Miles.	Cents.	Cents.
Fairford, Ala.....	37	14.4	20.25	136	19	36.75
Sims Chapel, Ala.....	47	15	20.25	126	19	36.75
Topton, Ala.....	51	15.6	20.25	122	19	35.75
Seaboard, Ala.....	54	15.6	20.25	119	19	35.75
Chatom, Ala.....	68	19.4	24.25	105	17.5	33.75
Cullomburg, Ala.....	88	23.75	27.75	85	17.5	27.75
Gilbertown, Ala.....	101	23.75	33.75	72	17.5	24.25
Jackson, Ala.....	107	27.5	33.75	66	17.5	28.25
West Butler, Ala.....	115	27.5	35.5	58	15.5	23.25
Cromwell, Ala.....	128	32	32	45	15.5	20.25
Ward, Ala.....	137	29	31.5	36	12.5	16.25

A number of these suspended rates were published in error. The rate between Mobile and Fairford should have been 16.25 cents instead of 20.5 cents. The rates between Mobile, on the one hand, and Cromwell and Ward, on the other, were not increased to the level of the rates between Meridian and Tennessee & Northern stations for corresponding distances. The suspended rates between Mobile and those points should be 36.75 cents. The suspended rates from and to Meridian exceed the present joint class-O rates, applicable on fertilizer under respondents' exceptions to the classification, by from 30 to 90 per cent, or from 75 cents to \$3.55 per ton. Meridian protestants contrast the proposed rate to Fairford with the rate of \$5.80 per ton from St. Louis, Mo., to New Orleans, La., 698 miles, prescribed in *Rates To, From, and Between Points South of Ohio River*, 64 I. C. C., 306. The record clearly shows that the proposed rates on fertilizer, carloads, between Meridian and points on the Tennessee & Northern would be unreasonable, and does not warrant us in approving any increases in the present joint rates.

The application of combination rates between Meridian and the Alabama cities, on the one hand, and points on the Tennessee & Northern, on the other, would also result in abnormally high rates on cotton, brick, lime, plaster, cement, and sewer pipe, in carloads. On pressed brick and sewer pipe for distances in excess of 30 and 35 miles, the Tennessee & Northern factors of the suspended rates from and to Meridian exceed by more than 100 per cent the rates prescribed in the *Meridian Case* for corresponding distances on the Southern and Alabama Great Southern. The Tennessee & Northern factors on lime, plaster, and cement are almost as high by comparison, particularly for the greater distances. That factor on common brick, while lower than on the other commodities, is markedly disproportionate to the suspended rates of the other lines for like distances. The suspended cotton rates likewise reflect the extremely high levels of the Tennessee & Northern local scale on that commodity, beginning with 50 cents per 100 pounds, or \$2.50 per bale, for distances of 5 miles or under, and progressing to 87.5 cents per 100 pounds, or \$4.375 per bale, for the maximum distance of 190 miles between points on that line. The proposed rates to Meridian from stations Ward to Silas, and from Boyd to Shepards, inclusive, are from 92.5 cents to \$2.065 per bale higher than the present joint commodity rates.

Under the present tariffs applying between Meridian and points on the Tennessee & Northern most of the commodities considered in the preceding paragraphs and numerous others upon which substantial increases are proposed, are subject either to joint commodity rates, or to joint class rates governed by exceptions to the classification published in note 67 of agent J. E. Crosland's I. C. C. No. 4. The

joint class rates governed by these exceptions are principally included in classes K, L, M, N, and O. The suspended schedules do not provide combination class rates on the five classes named. In respect of all other classes the application of our order in the *Meridian Case* would cause a greater number of reductions to and from Meridian than it would increase. It was not contemplated that the joint class and commodity rates between Meridian and points on the Tennessee & Northern found unreasonable in that case should be generally superseded by still higher combination rates.

We find that the suspended class and commodity rates to and from points on the Tennessee & Northern have been justified except as hereinbefore found; and except those on articles which under the schedules now in effect, have lower joint commodity rates or lower joint class rates applicable between Meridian and points on the Tennessee & Northern on traffic rated in classes K, L, M, N, and O in note 67 of agent J. E. Crosland's I. C. C. No. 4. We further find that the proposed increased rates on commodities included within the foregoing exceptions have not been justified and that such lower joint class and commodity rates are, and for the future will be, just and reasonable for application thereon between Meridian and points on the Tennessee & Northern. Respondents will be required to cancel rates under suspension that are higher than those found justified and to establish rates in accordance with our findings herein.

An appropriate order will be entered.

It should be understood that our findings and order herein supersede those made in the *Meridian Case* in so far as they may be inconsistent therewith.

66 I. C. C.



## NEW ENGLAND DIVISIONS.

No. 11756.

BANGOR &amp; AROOSTOOK RAILROAD COMPANY ET AL.

v.

ABERDEEN &amp; ROCKFISH RAILROAD COMPANY ET AL.

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*Submitted November 29, 1921. Decided January 30, 1922.*

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Upon reargument findings in 62 I. C. C., 513, modified. The divisions of the joint class rates under consideration and of the similar joint commodity rates which divide on the class-rate basis, other than those in which complainant the Bangor & Aroostook Railroad Company participates, found unjust, unreasonable, and inequitable for the future to the extent that complainants' divisions thereof shall be less than 115 per cent of their present divisions, except in cases where their present divisions are greater than the divisions accruing to defendants, in which cases the aforesaid divisions are found unjust, unreasonable, and inequitable for the future to the extent that complainants' divisions shall be less than their present divisions plus 15 per cent of the divisions now accruing to defendants.

*Charles F. Choate, jr.*, for complainants.

*Henry Wolf Biklé and John C. Bills* for defendants.

## REPORT OF THE COMMISSION ON REARGUMENT.

## BY THE COMMISSION:

In our former report, 62 I. C. C., 513, we considered the complaint of certain steam railroads,<sup>1</sup> operating almost wholly within New England, that the divisions accruing to them out of the joint freight rates between points in New England on their lines and all other points in the United States and adjacent foreign countries were and are in violation of paragraph (4), section 1, and paragraph (6), section 15, of the interstate commerce act. We found that the record afforded no foundation upon which might rest a valid prescription by us of divisions, but that we could not disregard the conditions portrayed. Existing divisional arrangements were the "antithesis of equality, uniformity, system, or order," and our conclusion, at pages 565-6, was:

Our duty would not be fully performed if we did not require a readjustment under which the conditions shall be relieved and demonstrably fair treatment accorded to all parties with respect to individual divisions. We are convinced,

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<sup>1</sup> Bangor & Aroostook Railroad Company; Boston & Maine Railroad; Central New England Railway Company; Central Vermont Railway Company; Maine Central Railroad Company; New York, New Haven & Hartford Railroad Company; Rutland Railroad Company; and their subsidiaries and operated lines.

upon consideration of all the facts, that just, fair, and equitable divisions can not in many instances flow from the chaotic divisional arrangements to which we have adverted. We shall expect defendants and complainants to promptly submit to us proposed readjustments that will remove the inconsistencies portrayed of record and bring into conformity with the principles of law and equity expressed in the act the divisional arrangements, individually and as a whole, between complainants and defendants. To this end designation by the parties of appropriate committees of qualified personnel is recommended, and we shall expect the appointment of such committees to work jointly in revision of the divisions and to report to us at the end of 90 days after the date hereof the results of their efforts, together with statements of divisions upon which agreement has been reached, as well as those upon which there may not be complete agreement. Such statements may be accompanied by statements of fact and argument upon which the respective committees rely. Thereafter reports should be made to us at the end of each period of 60 days until final and complete disposition of the issues shall have been accomplished.

Subsequently, no readjustment having been accomplished, complainants filed a petition for reargument, and this request was granted. It now becomes necessary to re-examine the subject and our former conclusions in the light of this reargument, which was held on November 29, 1921, and in the light of our own further consideration of the law and the evidence.

At pages 560-1 of our former report, we considered the provisions of paragraph (6), section 15, of the interstate commerce act, mentioned the various pertinent factors which we must consider in fixing divisions, and summarized our duty as follows:

We are bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate each carrier, relatively and *per se*, for the service it performs in the joint haul under joint rates, fares, and charges. Our determination must be predicated upon a consideration of all the various pertinent factors including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive.

In view of our conclusions as to the facts, this was an adequate summary. But in *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, 61 I. C. C., 272, where we prescribed divisions, we stated the intent and purpose of the law as follows, at page 283:

We are not prevented by the provision above quoted from taking into consideration any circumstances and conditions which we may deem to have weight in measuring the justice and reasonableness of divisions; but it is an intent clearly disclosed that we shall keep continually in view the public interest, the public need for a transportation system strong in all its parts, and the consequent necessity that carriers shall receive compensation fairly proportioned to the amount and character of the service which they perform and adequate to enable them to perform it efficiently.

Paragraph (6), section 15, of the interstate commerce act was a part of the transportation act, 1920. Both the legislative history and the provisions of that act make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the nation. The principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest.

Upon this foundation rests the provision with respect to divisions. As we said in *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, *supra*, at page 282, "it recognizes clearly that divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers." We there held that strategic advantage was not a factor to which we could give weight in fixing divisions, and that (page 283) "it was to avoid the unduly prejudicial effect of such strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities upon which a substantial portion of the country depends that our powers over divisions were clarified and strengthened." The thought dominates the law, as it is now framed, that a paramount consideration in determining the equitable share of the joint revenue which any carrier shall receive must be the relative amount and cost of the service which it renders, and that mileage is not a gauge of relative cost where terminal service is performed or the transportation is carried on under other unfavorable conditions.

And Congress went further. It required us to give due consideration to—

the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation,

And also to—

the importance to the public of the transportation services of such carriers.

In our former report, at page 561, we paraphrased this requirement by saying that one of the pertinent factors to be considered is the "ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations"; and we also said that while the "public interest does not demand nor does the statute either expressly or by reasonable implication provide that we may prescribe increased divisions of joint rates, fares, and charges to be received by certain carriers merely because other carriers participating in the joint rates, fares, or charges, considered as a whole, have not failed in so great a degree to earn a fair return

upon the value of their property devoted to the public service," nevertheless "this is one factor which may be taken into consideration."

It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. The cost of the service includes not only expenses of operation but taxes and the proper capital charges incident to the continued functioning of the property. We recognize this when we make allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange traffic may likewise be greater, relatively, where this density is low. Moreover, the group plan of increasing rates which we followed in 1920 under the provisions of the new law necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned. Due regard for the public interest demands that we give these fortuitous inequalities consideration in the fixing of divisions.

Summing up this phase of the matter, we are of the opinion that our power over divisions is founded upon the public interest; that the carriers are mutually dependent parts of the transportation system; that the public interest requires that all essential parts be maintained, so far as possible, in effective working condition; that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier.

Complainants perform their part of the interchange service under less favorable conditions than their connections west of the Hudson River. They are terminal lines; their hauls are short; their traffic splits at frequent junction points and is diffused over many secondary and branch lines; their trainloads are necessarily relatively light; the density of their freight traffic is relatively low; and while their investment per mile of road is low, their investment per revenue ton-mile is relatively high. Moreover, no coal mines are located on their rails, and fuel and many other supplies must be brought from considerable distances.

These unfavorable conditions are not new; they have long existed. They have been the cause, however, of a disproportionate increase in the burden upon the New England lines during the past three years.

This has come about from the extraordinary increases in wages and rates which have taken place within that period. It is inevitable that when freight rates are increased the carrier that brings its fuel and other supplies from a distance will suffer disproportionately. On coal alone and by the 40 per cent increase in freight rates alone complainants' costs were increased over \$3,400,000 annually. It is also inevitable that when wages are increased the carrier that produces less ton-miles per unit of labor will suffer disproportionately. In this connection the following statistics for the year 1919 are of particular significance. They show percentages for the New England lines as compared with their connections in trunk line and central territories:

Car-miles per car-day.....	73. 5 per cent.
Net ton-miles per car-day.....	60. 8 per cent.
Net ton-miles per train-mile.....	57. 4 per cent.
Net ton-miles per locomotive-day.....	55. 9 per cent.
Cost of yard expenses per 1,000 net ton-miles.....	155. 5 per cent.
Freight-train costs per 1,000 net ton-miles (wages).....	184. 1 per cent.
Freight-train costs per 1,000 net ton-miles (total).....	176. 7 per cent.

While labor is apparently not so large a factor, relatively, in the operations of the smaller northern New England lines as it is in the operations of the more complex and congested lines of southern New England, the northern lines have likewise suffered a disproportionate burden by reason of the increases in wages during the past three years to a standardized level, since the wages which they paid theretofore were below the average prevailing in the eastern group.

The divisional arrangements exhibited of record are built upon block bases, and in some cases constructive mileage is used or arbitraries are added. As pointed out in our former report, the blocking is often irregular, inconsistent, and illogical. Nevertheless, this system of dividing the joint rates of the New England lines and their western connections has existed for a great many years, and, so far as the record shows, without complaint until the extraordinary changes of the past three years. It is a reasonable assumption that until then it produced on the whole results which were fair.

The divisional arrangements shown apply to class rates, and generally to the commodity rates on articles which are classified. There is no evidence with respect to the divisions on coal and coke, fluid milk and its edible products, high explosives, or certain low-grade commodities moving short distances. Nor were divisions of the Bangor & Aroostook shown. Findings can not be made with respect to any of these divisions, and complainants do not now ask for such findings. On the other hand, defendants made no offer to prove that divisions in such cases are so favorable to complainants as to make up for deficiencies elsewhere, and the absence of evidence

in regard to the divisions of certain rates constitutes no reason for failure to act upon the divisions as to which there is evidence.

With respect to the latter complainants submitted exhibits showing the divisions as between the New England roads and their western connections of several thousand joint rates applying between every division block of complainants other than the Bangor & Aroostook and representative points of traffic importance in all parts of the eastern group. One of the principal witnesses for defendants testified that the selection was illustrative and fair. Similar information was submitted by complainants with respect to various transcontinental rates and rates to and from the south, but no evidence was offered by defendants operating in southern or western territories. Before the extraordinary changes of the past three years the New England lines, because of the relatively unfavorable conditions which have already been mentioned, were clearly entitled to divisions materially larger than would be received under a mileage prorate. The evidence shows:

1. That in not a few cases the present New England divisions are less than would be received on a strict mileage basis; that they are generally larger; but that in many cases the excess is slight.

2. That in many cases the New England divisions are larger than would result from a 50-mile block plan, allowing an extra block of 50 miles to both the originating and the terminal carrier, although frequently they are smaller.

3. That in many cases the New England divisions are a smaller percentage of the corresponding local rates than are the divisions west of the Hudson, although by no means in all cases.

4. That in the instances where the New England lines are allowed arbitraries before the division of the rates, these arbitraries have not been increased, notwithstanding the large percentage increases which have been made in the joint rates in recent years.

Having in mind that the 50-mile block plan is designed merely to afford some additional compensation to the originating and terminal carriers and makes no allowance whatever for operating disadvantages of the New England roads, apart from terminal service, there is nothing in this evidence which tends to overthrow the presumption that the divisional arrangements, prior to the recent extraordinary changes, produced fair results or that they were unduly favorable on the whole to the New England carriers. But if this presumption be accepted as a fair and reasonable conclusion from the facts of record, the further evidence with regard to the effect of the recent extraordinary changes leads inevitably to the conclusion that the scales which formerly hung approximately level as between the participating carriers are now tipped against the New England

roads and in favor of their western connections, because of the disproportionate results of these changes.

These conclusions are further supported by the evidence in regard to financial needs. In 1917 the railway operating income of the complainants amounted to 5.68 per cent upon their recorded railroad property investment, as compared with 5.63 per cent for the carriers in the remainder of the eastern group. In 1919 this had changed to 1.02 per cent for the New England lines and 1.84 per cent for the other carriers. For the first 10 months of 1920 the railway operating deficit of the New England roads amounted to 3.10 per cent upon investment, while the similar deficit of the other eastern carriers was but 0.92 per cent. Finally, in the 12 months ended September 30, 1921, it appears that the deficit of the New England roads was 0.87 per cent upon investment, while the income of the other carriers amounted to 2.85 per cent. Thus the relative situation of the New England carriers has grown progressively worse, and it is a fact generally conceded that as a group they are in greater financial need than any similar group of important carriers in the country. Moreover, in comparing the results from operations, it may be noted that the investment of the New England roads is relatively low per mile, and that there is evidence sustaining the soundness and validity of this investment while no similar evidence has been offered with reference to the other carriers.

In *Increased Rates, 1920*, 58 I. C. C., 220, we said, at page 247:

While the New England carriers are included in the eastern group and are subject to the percentage for that group, the evidence as to the disproportionate needs of the New England lines makes it desirable that the carriers give careful consideration to the divisions of joint rates accruing to these lines.

Nor does the evidence indicate that the financial needs of the New England lines are ascribable to the low level of their local freight rates or passenger fares. Both the class and commodity rates within New England were revised and increased in 1914 in a manner described in *The Five Per Cent Case*, 32 I. C. C., 325, as follows, at page 333:

The beneficent effect of an intelligent revision of rates is shown by the results obtained in New England while this proceeding was pending. The New England carriers sought approval in this case of an increase only in the rates on traffic moving between that territory and other parts of official classification territory; they did not propose a general 5 per cent increase in their freight rates. Those carriers undertook instead a general rate revision, which has since been largely effected through friendly conferences with state commissions and with shippers and is now, by common consent of the shipping public and state officials, being brought to a conclusion on a basis that will afford those lines much larger additional net income than they could have secured through a 5 per cent increase in their freight rates.

The class rates were again sharply increased following our decision in *Proposed Increases in New England*, 49 I. C. C., 421, and upon this special increase were superimposed the subsequent 25 per cent and 40 per cent increases. The evidence also shows that passenger traffic in New England is generally more profitable than freight traffic.

If this were a case involving a proposed general increase or reduction in rates, evidence of the character which has thus been summarized, indicating a general need for relief, would be deemed persuasive and as justifying a horizontal increase or reduction. It has been our practice in such cases to disregard the immediate effect upon particular rates and to afford relief without delay, leaving a door open for any necessary subsequent readjustments. Thus in *Increased Rates, 1920, supra*, we said, at page 243 :

It would be desirable, if it were possible, to determine definitely the commodities, the sections of the country, and even the individual rates which can best bear the burden of increases, and the relationships of rates and differentials which will be disturbed by a percentage increase. This is precluded by the necessity of prompt action upon the main issues presented.

And later, at page 256, we said :

The rates to be established on the basis hereinbefore approved must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary.

In the cases involving intrastate rates which followed this general increase of 1920 it has been customary to supplement our general findings by the following reservation :

These findings are without prejudice to the right of the authorities of the state of \* \* \*, or of any other party in interest to apply, in the proper manner, for a modification of our finding and order as to any specific intrastate rates, fares, or charges on the ground that the latter are not related to the interstate rates, fares, and charges in such a way as to contravene the provisions of the interstate commerce act.

Likewise, in *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, where percentage reductions in the rates on grain, grain products, and hay in the territory west of the Mississippi River were ordered, we were not deterred by the fact that such reductions might, and probably would, leave certain individual rates unreasonably low and others unreasonably high. In all such general rate cases we have realized and have held that if we were required to consider the justness and reasonableness of each individual rate, the law would in effect be nullified and the Commission reduced to a state of administrative paralysis.

Is there good reason why a similar policy should not be pursued when parts of rates, i. e., divisions, are in issue? Manifestly there is

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need, in the case now before us, for a thorough revision of divisional arrangements upon a more logical and systematic basis. Manifestly, also, if a horizontal increase is made before this revision takes place, the result may be to leave certain divisions too high and others too low. But in this respect the results flowing from the general increases or reductions in rates which we have frequently authorized have been parallel. Moreover, any comprehensive revision upon a logical and systematic basis can be consummated only after many months of labor and, very probably, only after further prolonged recourse to us. In the meantime the New England lines will be denied even a portion of the relief to which the record indicates that they are entitled and which the public interest clearly requires.

It has been suggested that when we authorize a horizontal increase in rates any shipper who may thereby be subjected, in a particular case, to the payment of unreasonable charges has the opportunity to obtain an award of reparation. But such an award can not be obtained, as a rule, without expense; and, furthermore, if similar general relief were granted in a divisions case, the opportunity would likewise be open to any individual defendant carrier to complain at once of its own divisions, and upon proper showing to obtain a revision dating back to the filing of its complaint. It may be noted that where a general reduction of rates is ordered, as in *Rates on Grain, Grain Products, and Hay*, *supra*, no similar opportunity is afforded. In *Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co.*, *supra*, and in *East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J.*, 63 I. C. C., 80, we prescribed blanket increases of divisions without considering the separate divisions of the numerous defendant carriers.

Upon further consideration we are of the opinion that in a case involving divisions we may, when the public interest so requires, grant immediate relief subject to later readjustments, as we have done in cases involving general increases or reductions in rates. Otherwise, we shall fail to do substantial justice. The act requires a practical administration, and prompt action where that is necessary in the public interest. In our former report we recognized the need for a revision of the divisions. The course of action suggested in that report having failed to produce prompt relief, we must adopt another, justified by the record, which will accomplish what Congress intended should be accomplished.

We are of the opinion, therefore, that some immediate relief may properly be granted to complainants, pending revision of the existing divisions upon a more logical and systematic basis; but that relief should be held within conservative limits. The New England lines are in part responsible for the difficulties which the case presents because of their failure until recently to give the attention and

study to their divisional arrangements of which these have plainly been in need. It remains to determine what form this immediate relief should take.

As already stated, evidence is lacking in regard to the divisional arrangements on certain specified classes of traffic. Our action will be restricted to the divisions of class rates and of the commodity rates which divide on the class-rate basis. With respect to the divisions on traffic with Canadian lines we said, at page 516 of our former report:

With respect to commodities moving in foreign commerce, we are not asked to determine whether or not the divisions of the rates are just, reasonable, and equitable, but to require the cancellation of all joint rates and charges on such traffic or to authorize such other action as shall assure just, reasonable, and equitable compensation to the parties for their services in connection therewith. Nothing of record bears on the cancellation of the joint rates. With respect to the divisions which now accrue to the complainants out of the joint rates with their Canadian connections, it should be observed that our jurisdiction inheres only in so far as the transportation takes place within the United States.

No reason has been shown for changing this conclusion.

In one of their exhibits complainants showed, for a constructive year ended October 31, 1919, the revenues accruing to them on so-called merchandise traffic interchanged with connecting lines and the revenue accruing to the other carriers participating in the same traffic. This covers traffic other than coal and coke. Eliminating interchange with Canadian lines, the total revenue on this merchandise traffic was \$117,118,424, and of this amount \$37,974,231, approximately one-third, accrued to complainants, and the remainder, \$79,144,193, approximately two-thirds, to connections. In the presentation of their case in *Increased Rates, 1920, supra*, the carriers showed that prior to the increase of wages in 1920 the New England lines required an increase of about 47.5 per cent in their freight revenues to meet their needs, while the other carriers in the eastern group required but 28 per cent. It was testified that the increases which we subsequently authorized averaged about 37 per cent throughout the eastern group. If it had been possible to provide at that time that one-half, instead of one-third, of this increase on the merchandise interchange traffic should accrue to the New England lines because of their greater needs, they would have been benefited to the extent of about \$7,500,000 additional per year, and no one, we think, would have regarded such a distribution of the increase as unfair under the circumstances. This amount, moreover, falls well below any estimate of the disproportionate burden which the New England lines have suffered in the past three years by reason of the extraordinary changes in rates and wages.

An increase of this amount in the divisions received by complainants would manifestly be of benefit to them far greater than the detriment to their western connections. To illustrate this: If the railway operating income of complainants had been increased by \$7,500,000 in the 12 months ended September 30, 1921, their deficit of 0.87 per cent on investment would have been converted to an income of 0.04 per cent; while if the railway operating income of the other lines in the eastern group had been decreased by a like amount, the result would have been only a reduction in the amount earned on investment from 2.85 per cent to 2.76 per cent. It further develops that if the divisions now received by complainants on this merchandise traffic were increased by 15 per cent, subject to the limitation hereinafter set forth, the result, as nearly as can be estimated, would be an increase in revenue of not exceeding \$7,500,000.

We find, therefore, that the divisions of the joint class rates here under consideration and of the similar joint commodity rates which divide on the class-rate basis, other than those in which complainant, the Bangor & Aroostook Railroad Company, participates, will for the future be unjust, unreasonable, and inequitable to the extent that complainants' divisions thereof shall be less than 115 per cent of their present divisions, except in cases where their present divisions are greater than the divisions accruing to defendants, in which cases the aforesaid divisions will for the future be unjust, unreasonable, and inequitable to the extent that complainants' divisions shall be less than their present divisions plus 15 per cent of the divisions now accruing to defendants. We further find that the just, reasonable, and equitable divisions to be received by the several other carriers participating in the aforesaid joint rates will for the future be the amounts remaining of the joint rates over and above the divisions so to be received by complainants, to be divided among them as they may agree, or, failing such agreement, as may be determined by us upon application therefor.

We enjoin upon complainants and defendants the necessity for proceeding as expeditiously as possible with the revision of divisions upon a logical and systematic basis which we recommended in our former report; and in order that delay in this process may be reduced to a minimum, we make the following additional recommendation:

Instead of attempting to cover the entire field at once, certain important traffic of comparatively simple characteristics should be selected and attention concentrated in the first instance upon the divisions of the rates upon such traffic in order that a suitable guide for the revision of other divisions may as soon as possible be provided. For example, the class rates applying between Boston and Chicago and other typical points of traffic importance in official territory

might be selected, the rates on iron and steel from Pittsburgh, the rates on fresh meat from Chicago, and the rates on cement from producing points into New England. In making a study of such specific rates, every effort should be made to ascertain with such approximate accuracy as may prove possible the respective costs of the service performed by the various participating carriers, including in such costs a fair share of the charges attributable to taxes and a reasonable return upon the property. The other elements mentioned in the statute, in addition to mileage, should likewise be considered. In case of inability to agree upon the divisions of such rates, the question may be presented to us in advance of the consideration of other specific divisions.

An appropriate order will be entered.

**POTTER, Commissioner,** concurring:

While my conception of the spirit and theory of the transportation act was explained in an opinion which I filed dissenting from the former report, I desire to associate with the dissenting opinions filed at the present time a statement making the issue distinct and clear.

The majority report now filed requires no taking from the respondents of anything that belongs to them. It proposes only to insure a disposition of joint earnings necessary to promote the purpose for which, under the transportation act, the earnings were authorized to be collected from shippers. The result of *Ex Parte 74* was to establish anew, under the transportation act, the basis of rates and fares, the carrier revenues to be enjoyed therefrom to be appropriated as the act contemplates. Increased collections from shippers were authorized. They were authorized primarily in the public interest to insure transportation throughout the nation. In our decision in *Ex Parte 74* we could, within the law and with all propriety, then have directed a distribution of the increase in line with the needs of the various carriers if they were properly to serve the public interest. We perhaps should have done this. To have done so would not have been to take from any line anything that belonged to it. No carrier is entitled to earnings except as they fit the purpose for which the earnings are authorized. Railways, in furnishing transportation, perform a governmental function and are subject to regulation and control. I understand the theory of the transportation act to be that the Congress lawfully may prescribe conditions upon which the performance of that function may be continued, not infringing upon the right to earn a fair return; that earnings allowed are in the nature of compensation for services and should be neither more nor less than fair; and that an important aim

of the transportation act was to prevent certain carriers from receiving more than they are entitled to or need, and to insure that other carriers will receive their needs. The virtue of the act largely will depend on whether we, as the agency of the Congress, can accomplish that stability of income essential to justify its limitation. To provide as a part of an authorization to collect a particular return that a portion of the collection shall be devoted to a particular purpose is, in substance, an authorization to the carrier to itself receive and enjoy the remainder, and does not infringe in any way upon any of its rights. It is fair and proper that all shippers interested in transportation should share in the burden of maintaining it. It is legal and proper that a carrier performing a governmental function be required, in addition to collecting the moneys to which it is entitled, to also serve as the agent to collect funds to which other carriers are entitled. Such is the spirit of the transportation act, as I understand it, which we are bound to apply, and such is the definition of our power to effectuate the act. What we might have done in *Ex Parte 74* we may do now. The record shows a disproportionate burden which conditions of recent years have placed upon the New England carriers as a whole, as compared with the respondents as a whole. We authorized the raising of moneys to carry that burden and the transportation act gives us the power and imposes the duty to see that those earnings go where they belong. The present report is necessary to carry out that purpose and prevent the misapplication to one use of funds which we authorized to be raised for another use. It affords a practical way of more nearly accomplishing justice. No other way is available. We can protect any particular carrier who brings to our attention a situation where the application of this method works hardship.

HALL, *Commissioner*, dissenting:

In expressing my profound dissent from most that is said and all that is decided in the present report it is unnecessary to reiterate what we said and found in our original report. That stands unrevoked and unshaken. The record before us is the same, and what was true then is true now. But the present majority, in clearing a path to the present conclusions and order, has developed a construction of the law, and of our functions under the law, which, if tenable, would stamp it as no law because beyond the power of Congress. Whether or not the Congress can curb the strong and foster the weak under the guise of protecting the public interest, certainly it can not confer such power upon its agency. It can and does determine the regulations to which all common carriers by railroad engaged in interstate or foreign commerce, whether strong or weak, must conform in the public interest. It has prescribed certain standards for that regulation and has committed to this Commission, as

its agency, the application of those standards to the facts which may be developed of record upon complaint or in the course of inquiry. In thus administering and enforcing the interstate commerce act we can change what the carriers do or have done only as we find violation of that act, and in doing so must mete out an evenhanded justice to all parties before us, whatever their weakness or strength. It has not been committed to us to equalize the fortunes of carriers, of localities, or of men.

In the present proceeding we find some, not all, of the rail carriers in New England arrayed against practically all other rail carriers in the United States. Joint rates, class and commodity, from and to the south and the west, clear to the Gulf and the Pacific, are maintained by these New England carriers in connection with the defendants there, as well as with their nearer neighbors just across the Hudson. The Potomac, the Ohio, and the Mississippi are crossed as well as the Hudson. The defendants are in varying stages of prosperity and adversity. Some are in the hands of receivers. Some, like those in the south, have suffered far greater enhancement of their labor costs by federal wage increases than have the complainants. Yet all of these defendants, without exception, are here required to yield up to some New England roads shares greater by 15 per cent than those which they have agreed upon among themselves. No attempt is made to ascertain the effect upon defendants of this requirement, or to ascertain whether the shares remaining to them of the joint earnings will be just, reasonable, and equitable. There is not even a perfunctory compliance with the mandates of the statute in that regard. The record affords no basis for it. The one outstanding fact in the report is that in the opinion of the majority the complainants need the money. Perhaps the defendants need the money as much, and have a better right to it. On that we get little light and no facts on which to exercise a judgment. What are the rates to be divided, what is the important tonnage which moves at those rates and on which the important earnings are made, what are the respective services performed by the participants in effecting the movement, what are the cost and value of those services, and what the present divisions here condemned? The report gives no answer.

These divisions were determined by the parties themselves many years ago. Complainants make no attempt to show that they were cozened or coerced into agreeing upon them. On the contrary, they urge that until recent years their divisions, as a whole, were reasonable. They now claim that because conditions which have developed during the last few years have affected them seriously, their divisions, as a whole, are no longer reasonable. They show how these conditions have affected them but do not attempt to show how defendants

have been affected by like or other conditions, or will be affected by decreased divisions. The burden is upon complainants. There is thus a failure of proof in essentials necessary to entitle complainants to such reformation of their contracts as is here required.

I can give no adherence to the view that we may increase or decrease divisions of joint rates simply to meet the varying financial needs of particular carriers or groups of carriers without regard to the amount, cost, or value of the services performed by the several participating carriers, or the share of joint earnings which will remain to each after the change is made.

For the reasons indicated, as well as those stated in COMMISSIONER DANIELS' dissent, I adhere to the conclusions expressed in our original report.

DANIELS, *Commissioner*, dissenting:

Included in the conclusions reached in our original report are the following:

We think that there is merit in the allegations of defendants that the proceeding is, in substance, an effort on the part of complainants to augment their revenues from traffic which they interchange with their connections without regard to the question of whether the present divisions of the various joint rates are fair and reasonable or consideration of the probable effects upon the revenues of the respective defendants. \* \* \* [page 559.]

We are bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate each carrier, relatively and *per se*, for the service it performs in the joint haul under joint rates, fares, and charges. \* \* \* [page 561.]

Nor are we vested with discretion by virtue of which the mandate of section 1, paragraph (4), that divisions of joint rates, fares, and charges as "between the carriers" participating in joint hauls shall be just, reasonable, and equitable might be made ineffective by administrative or judicial action. \* \* \* [page 562.]

To treat the complainants "as a whole" or as a group would disregard the differences which obtain between the complainants individually. \* \* \* [page 563.]

We are authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers." Full hearing and competent and relevant evidence are prerequisite. Any attempt to prescribe a blanket increase of divisions as here sought in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable, and equitable to complainants would override the plain mandate of law.

While we are urged to adjust the divisions "as a whole" on the presumption that the facts shown of record as to a part of the complainants are generally true as to all of them, and that they reflect the situation in New England, it is to be noted that some of the roads in New England have been excluded from the list of complainants and included in the list of defendants. To so deal with the situation would not be treating the New England roads as a group. It would be taking from one road and giving to a less prosperous road, thus doing by indirection what the Congress deliberately and specifically refused to author-

ize us to do. The statutory provision for recapture of excess earnings from individual carriers also clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality.

\* \* \* [page 565].

Upon reargument nothing was presented which, in my opinion, tended in any wise to invalidate any of the conclusions set out above. I am therefore compelled to adhere to our original decision.

The present report of the majority is based, as I understand it, on the ground that despite the directions which we there issued for a readjustment of divisions, "no readjustment having been accomplished" and "the course of action suggested in that report having failed to produce prompt relief," some immediate relief may properly be granted to complainants. In passing, it is only fair to observe that while we enjoined upon the parties promptly to submit proposed readjustments that would remove the inconsistencies portrayed of record and to make to us progress reports, the first within 90 days, and subsequent reports every 60 days thereafter, we did not contemplate, nor was it reasonable to anticipate, that failure by this time to produce results would be evidence of dereliction warranting summary action by us in the premises. Indeed, the failure to effect results must be attributed in large part to the complainants themselves, who, though jointly persisting in their claim of increased divisions to themselves "as a whole," proceeded promptly not to act in unison for a readjustment but to appoint each its separate committee to study and present a new plan of divisions in its individual interest.

The underlying thought of the present report seems to be that just as under paragraph (2) of section 15a of the interstate commerce act we may prescribe just and reasonable rates for the "carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate)," we may in like fashion adjust divisions between carriers as a whole, under section 1, paragraph (4), whereby we are authorized to establish just, reasonable, and equitable divisions of joint rates as between the carriers participating therein; or under section 15, paragraph (6), by virtue of which we may by order prescribe just, reasonable, and equitable divisions to be received by the several carriers.

To me it seems that there is an insurmountable antithesis between prescribing rates for carriers as a whole, and establishing divisions between the several carriers participating in joint rates. The fact that general rate levels as well as divisional arrangements may be affected by a public interest does not assimilate our powers in the respective premises. In short, I do not believe that the complainants



have brought themselves within the terms of the sections of the statute which they invoke.

The same fundamental thought of the present report is that our action in cases involving a general rate increase may serve as a model for a similar proposed general divisional increase. The report says:

If this were a case involving a proposed general increase or reduction in rates, evidence of the character which has thus been summarized, indicating a general need for relief, would be deemed persuasive and as justifying a horizontal increase or reduction.

Some of the essential distinctions between the two situations are the following. First, a general rate increase involves all traffic. In this divisional case it is doubtful whether divisions on even half of the interchanged traffic are involved. Of some 34,000,000 tons, comprising the total, we must deduct 14,000,000 tons, covering coal and coke. We must deduct traffic on commodities not covered in this proceeding. We must deduct traffic interchanged with Canadian carriers. We must deduct the traffic of the Bangor & Aroostook. While the residue may not be ascertainable with precision, it may fairly be said that it does not cover more than half of the total interchanged traffic. Here we have a striking contrast to the various general horizontal increases, such as *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325; *The Fifteen Per Cent Case*, 45 I. C. C., 303, general order No. 28, and Ex Parte 74, which covered all traffic.

Second, in the more recent general horizontal rate increases, there has in general been an admission by all parties that some general increase was justified. Here, on the contrary, the western connections of the complainants unitedly contest the propriety of this proposed general divisional increase. In certain instances they present persuasive evidence that they are justly entitled to greater divisions than those which they now receive. Instances in point will be cited later.

Third, while the authorization of horizontal rate increases contemplates individual rate maladjustments, and provides for reparation in such cases, the prescription of divisions, as contemplated by the statute, has about it all the earmarks of finality. It must be based upon a positive and explicit finding that the divisions prescribed are or will be "the just, reasonable, and equitable divisions thereof to be received by the several carriers." The statute may be searched in vain for any authorization of a provisional fixation of divisions, whereas the present report concedes that the result of the proposed divisions "may be to leave certain divisions too high and others too low."

Fourth, where general horizontal rate increases have been permitted, the increases were superposed on a rate structure which in its elements has for years been under scrutiny by this Commission and large parts of which are our own creation. Here it is proposed to take a scheme of divisional adjustments, the origin of many of which is lost in obscurity, which the present report describes as "often irregular, inconsistent, and illogical" and which needs "a thorough revision of divisional arrangements upon a more logical and systematic basis." It is upon such a basis of divisions, self-condemned and condemned by the report itself, that a general percentage alteration is to be made. We have never sanctioned, and so far as I know, we have never been asked to sanction a horizontal rate increase upon a base that is admittedly impossible of even approximate justification.

The evidence of record contains not a few, but numerous instances where the present divisional bases seem grossly unfair to the complainants' connections. For example, from Holyoke, Mass., said to be the largest paper-producing point in New England, for a haul of 10 miles to the connecting carrier, the Boston & Albany, a subsidiary of the New York Central, the complainant receives on traffic to points west of Buffalo, N. Y., a division based upon a constructive mileage of 321 miles. This division will be increased under the present decision. Apparently so far as the New York Central and the New Haven are concerned, there are but two divisional blocks for the bulk of tonnage interchanged. For hauls averaging slightly over 40 miles, the New Haven draws divisions based on constructive mileage of 255 and 321 miles, respectively. These divisions under our order are to be increased. The divisions between the Boston & Maine and the New York Central via Troy are instanced in the record. Here it can not be reasonably suggested that the terminal expenses in New York City are not as great as at Keene, N. H., Fitchburg, Mass., or Concord, Mass. Taking Keene for the first example: The distance to Troy is 122 miles, thence via the New York Central to New York City the distance is 146 miles. The present first-class rate is 74 cents, of which the Boston & Maine now draws 45.8 cents, the New York Central 28.2 cents. The order in this report will increase the former's division to 50 cents, leaving the New York Central 24 cents. The sixth-class rate between Keene and New York City is 24 cents. It divides at present between the two carriers, 14.5 cents to the Boston & Maine; 9.5 cents to the New York Central. The order in this case augments the Boston & Maine division to 16 cents, leaving 8 cents to the New York Central.

Similar results are reached if we study the divisions from Fitchburg and Concord via Troy to New York City. The transcript (page 847) contains the following evidence by Mr. Eaton, for 33 years connected with the Boston & Maine:

*Query.* Now look at your rate to Concord. There again your haul is about the same as the New York Central haul.

*Answer.* From Concord the haul is greater.

*Query.* Yes. What do you think about the division of the 84-cent rate first class?

*Answer.* As to that particular rate I should say that that was a fair division.

*Query.* As it stands?

*Answer.* As it stands; yes, sir.

It would, of course, be misleading to cite the above as typical of the evidence generally. But it is proper to reproduce it, to indicate a not uncommon admission that certain divisions are already fair to complainants. The finding and order of the report, however, find all existing divisions assailed herein, are, without exception, unjust, unreasonable, and inequitable, and require them all, without exception, to be further modified progressively in favor of the complainants.

There are certain carriers against which the order in this case runs as to whose divisions with any of the complainants there is no evidence of record. Among such carriers are the Wheeling & Lake Erie, the Pittsburgh & Lake Erie, the Hocking Valley, and the Toledo, St. Louis & Western. So far as official classification territory traffic is concerned complainants have stated, and nothing to the contrary is shown by defendants, that there is no evidence of any divisions upon such traffic between any of the complainants and the Norfolk & Western, the Chesapeake & Ohio, and the Western Maryland. It may be that a qualification of the foregoing should be made to the extent that evidence bearing on increased costs of transportation in New England relates to the propriety of all divisions between New England carriers and their connections.

From such examination as I have been able to make of this case, I am of opinion that in an unknown percentage of cases—possibly in a small majority of cases—the New England complainants could be shown on an adequate record to be entitled to greater divisions than they now receive from joint rates; and that in an unknown percentage of cases, possibly somewhat less than half, the connecting carriers west of the Hudson could be shown on an adequate record to be entitled to greater divisions than they now receive. The disposition of the matter made in the first report would

have led to an equitable readjustment. However forcibly we may be impressed by the urgent financial necessities of some of the New England carriers, I can not believe that a novel construction of the statute, without justification in its legislative origin and history, should be seized upon and employed to effect a diffusion and redistribution of revenue among carriers in the eastern group, because, in our judgment, such redistribution is desirable, particularly when the outcome, if effectuated, would traverse the fundamental rights of connecting carriers and amount to a forced levy.

COMMISSIONER ESCH dissents.

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No. 12171.

PUBLIC SERVICE COMMISSION OF NEVADA

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted November 19, 1921. Decided February 7, 1922.*

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Itates on coal, in carloads, from the Castle Gate district in Utah and Rock Springs, Wyo., to certain points in Nevada found to be unreasonable. Reasonable rates prescribed.

*J. F. Shaughnessy, E. H. Walker, Charles S. Chandler, Benson Wright, and John E. Benton* for complainant.

*Lester J. Hinsdale and James S. Moore, jr.*, for Western Pacific Railroad Company; *Fred H. Wood, James R. Bell, C. W. Durbrow*, and *Elmer Westlake* for Southern Pacific Company, Union Pacific Railroad Company, Oregon Short Line Railroad Company, Oregon-Washington Railroad & Navigation Company, Tonopah & Goldfield Railroad Company, Nevada Copper Belt Railroad Company, and Virginia & Truckee Railway Company; *H. A. Scandrett* for Union Pacific Railroad Company and Oregon Short Line Railroad Company; *J. G. McMurray* for Denver & Rio Grande Railroad Company and A. R. Baldwin, receiver; and *Fred E. Petit, jr.*, and *E. E. Bennett* for Los Angeles & Salt Lake Railroad Company, Bullfrog Goldfield Railroad Company, and Tonopah & Tidewater Railroad Company, defendants.

*E. H. Walker* for Reno Chamber of Commerce, Reno, Nev.; Progressive Business Men's Club, Sparks, Nev.; Humboldt County Chamber of Commerce, Winnemucca, Nev.; Greater Carson Club, Carson City, Nev.; Chamber of Commerce of Churchill County, Fallon, Nev.; and *Charles S. Chandler* and *B. L. Quayle* for Nevada Consolidated Copper Company, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

*Esch, Commissioner:*

The issues here presented were made the subject of a proposed report by the examiner, to which exceptions were filed by complainant, interveners, and defendants, and oral argument has been had thereon before us.

The Public Service Commission of Nevada, by complaint filed January 31, 1921, alleges that the rates maintained by defendants for the transportation of bituminous coal, in carloads, from mines in Utah and southern Wyoming to destinations in Nevada are unreasonable, unjustly discriminatory, and subject the state of Nevada and the people thereof to undue prejudice and disadvantage, by comparison with the corresponding rates to destinations of similar or greater distances in surrounding states, in violation of sections 1, 2, and 3 of the interstate commerce act. The Reno Chamber of Commerce of Reno, the Progressive Business Men's Club of Sparks, the Humboldt County Chamber of Commerce of Winnemucca, the Greater Carson Club of Carson City, and the Chamber of Commerce of Churchill County, Fallon, all in Nevada, intervened in support of the complaint. The Nevada Consolidated Copper Company, operating a smelter at McGill, Nev., and conducting mining operations near Ruth, Nev., also intervened with the particular object of obtaining a reduction in the rate on slack coal from Utah and Wyoming mines to McGill. Rates are stated herein in amounts per ton of 2,000 pounds and, unless otherwise noted, are those applying on lump coal.

All carriers operating in the state of Nevada are parties defendant, and, in addition, other carriers over whose rails coal moves from Utah and Wyoming fields to points of destination in Idaho, Montana, Washington, Oregon, and California. The principal Nevada carriers are the Southern Pacific, Western Pacific, and Los Angeles & Salt Lake. The first carrier named extends westwardly across the state from Tecoma, on the east, through Reno, on the west, with branches south from Hazen, and north from Fernley. The Western Pacific extends across Nevada from Ola, on the east, to and through Gerlach, on the west, paralleling the Southern Pacific between Wells and Winnemucca. A branch line extends from Reno Junction, Calif., to Reno, a distance of 33 miles. The Los Angeles & Salt Lake reaches a few points in southeastern Nevada, among others Caliente, Pioche, and Las Vegas. Pioche is 33 miles north of Caliente, and is the terminus of a branch line. Other lines serving Nevada, defendants herein, are the Eureka Nevada, a narrow-gauge road 85 miles in length, extending from Palisade, on the Southern Pacific and Western Pacific, to Eureka; the Nevada Central, a narrow-gauge road extending from Battle Mountain, on the Southern Pacific, to Austin, 93 miles; the Nevada Copper Belt, extending from Wabuska, on the branch of the Southern Pacific south of Hazen, to Ludwig, 38 miles; the Nevada Northern, extending from Cobre on the Southern Pacific, through Shafter on the Western Pacific, to Kimberly, 151 miles; the Tonopah & Goldfield, Bullfrog Goldfield, and Tonopah & Tidewater,

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which together form a route extending from Mina, a connection with the Southern Pacific, through Tonopah and Goldfield to Ludlow, Calif., on the Atchison, Topeka & Santa Fe; and the Virginia & Truckee, which extends from Reno through Carson City to Virginia City, a distance of 52 miles.

Coal consumed in Nevada moves principally from mines at or near Castle Gate, Utah, a point on the Denver & Rio Grande Railroad 115 miles southeast of Salt Lake City and 152 miles southeast of Ogden, Utah, and from mines at Rock Springs, Wyo., 191 miles east of Ogden on the Union Pacific. The average distance from the Utah mines to Salt Lake City is 124 miles. The movement of coal from these two districts to destinations in Nevada amounted to 224,849 tons in 1916 and to 448,127 tons in 1918, of which in the latter year approximately 60,000 tons were for domestic use and 388,000 tons for industrial purposes. The points of largest consumption were McGill and Ruth, where nearly 300,000 tons, consisting principally of slack coal, were used in the smelting and mining operations of the Nevada Consolidated Copper Company. There has been a marked decline in the consumption of coal at McGill since 1918, due to the partial and at present complete closing of the properties. At the time of the hearing there was no apparent prospect of their early reopening.

Generally speaking, the rates on coal from the Utah and southern Wyoming mines to points in Nevada are the same. Utah coal moves, as a rule, via the Denver & Rio Grande to Salt Lake City, thence Western Pacific, and southern Wyoming coal moves via the Union Pacific to Ogden, thence Southern Pacific. The haul from the Utah mines is generally shorter by about 40 to 50 miles. Taking Castle Gate as representative of the Utah mines, the rate to Utah points on the Western Pacific and Southern Pacific near the Utah-Nevada state line is \$5.10; to Ola on the Western Pacific, 244 miles from Castle Gate, and to Tecoma on the Southern Pacific, 267 miles from Castle Gate, on the Nevada side of the state line, the rate is \$6.375, an increase of \$1.275. This rate is blanketed for a distance of approximately 250 miles. To Winnemucca, 511 miles from Castle Gate via the Western Pacific, the rate is \$6.75, and to the next station, 7 miles beyond, \$7.125. This latter rate is blanketed as far as Reno, 735 miles from Castle Gate, via the Western Pacific, and 692 miles via the Southern Pacific. West thereof the Pacific coast rate of \$7.25 applies to all main-line points intermediate to San Francisco, Calif. The rates to points on the Los Angeles & Salt Lake in Utah and Nevada adjacent to the state line, 7 miles apart, are \$5.20 and \$6.50, respectively. The rate of \$6.50 applies to Caliente and also to Pioche for distances of 364 and 397 miles from Castle Gate. The

rate to Boyd, 379 miles from Castle Gate, is \$7.875, and is the same as the rate applying to San Pedro, Calif., 850 miles. Although the rates from Castle Gate are also applied from Rock Springs, the distance is about 180 or 200 miles greater from Rock Springs than from Castle Gate to Provo or Lynndyl, Utah, where the coal from both districts comes together when destined to Nevada points on the Los Angeles & Salt Lake. As a rule, rates to branch-line points in Nevada and to points on short lines are graded up from the junction points and are in some instances based on combination of the rates to and from the junction.

The present rates on lump coal from Castle Gate to a number of representative points in Nevada, together with the distances and earnings per ton-mile and per car-mile, based on an average loading of 45 tons per car, are given in the following table, which has been compiled from one of complainant's exhibits:

Station.	Road.	Distance.	Rate.	Revenue per ton-mile.	Revenue per car-mile.
		<i>Miles.</i>		<i>Cents.</i>	<i>Cents.</i>
Ola.....	Western Pacific.....	244	\$8.375	2.614	117.62
Golconda.....	do.....	495	8.375	1.288	57.94
Winnemucca.....	do.....	511	8.75	1.32	59.42
Krum.....	do.....	518	7.125	1.376	61.91
Reno.....	do.....	735	7.125	.97	43.64
Tecoma.....	Southern Pacific.....	257	8.375	2.392	107.65
Elko.....	do.....	379	8.375	1.681	75.63
Battle Mountain.....	do.....	460	8.375	1.387	62.43
Hazen.....	do.....	647	7.125	1.101	49.54
Reno.....	do.....	692	7.125	1.029	46.31
Fallon.....	do.....	663	7.75	1.169	52.6
Wabuska.....	do.....	657	8.375	1.219	54.85
McGill.....	Nevada Northern.....	<sup>1</sup> 390	6.50	1.668	75.06
East Ely.....	do.....	<sup>1</sup> 398	6.75	1.697	76.38
Ruth.....	do.....	<sup>1</sup> 409	7.125	1.743	78.45
Eureka.....	Eureka Nevada.....	504	13.175	2.616	117.73
Austin.....	Nevada Central.....	553	9.375	1.696	76.32
Yerington.....	Nevada Copper Belt.....	699	10.275	1.47	66.14
Tonopah.....	Tonopah & Goldfield.....	845	12.10	1.432	64.43
Carson City.....	Virginia & Truckee.....	723	9.00	1.244	55.99
Virginia City.....	do.....	744	9.625	1.293	58.18
Caliente.....	Los Angeles & Salt Lake.....	364	6.50	1.786	80.36
Pioche.....	do.....	397	6.50	1.637	73.68
Las Vegas.....	do.....	489	7.875	1.61	72.47

<sup>1</sup> Via Western Pacific to Shafter.

Complainant contends that the rates to destinations in Nevada are unjust, excessive, and unduly prejudicial by comparison with corresponding rates from the same mining fields to points in Idaho, Montana, Washington, Oregon, and California. That the rates to Nevada are on a substantially higher level than those to points in other western states is shown by the following rate comparisons submitted by complainant:

66 I. C. C.



From Castle Gate to—	Road.	Total distance.	Distance on branch or short line.	Rate.	Revenue per car-mile. <sup>1</sup>
		<i>Miles.</i>	<i>Miles.</i>		<i>Cents.</i>
Montello, Nev.....	Southern Pacific.....	273		\$6.375	104.93
Pocatello, Idaho.....	Oregon Short Line.....	286		3.50	55.11
Palmsade, Nev.....	Western Pacific.....	408		6.375	70.37
Pioche, Nev.....	Los Angeles & Salt Lake.....	397	33	6.50	73.68
Twin Falls, Idaho.....	Oregon Short Line.....	404	59	5.50	61.29
Golconda, Nev.....	Western Pacific.....	495		6.375	57.94
Las Vegas, Nev.....	Los Angeles & Salt Lake.....	489		7.875	72.47
Dillon, Mont.....	Oregon Short Line.....	480		4.50	42.2
Lovelock, Nev.....	Southern Pacific.....	591		7.125	54.25
Gerlach, Nev.....	Western Pacific.....	605		7.125	52.98
Weiser, Idaho.....	Oregon Short Line.....	590		5.50	41.96
Huntington, Oreg.....	do.....	612		6.125	44.96
Carson City, Nev.....	Virginia & Truckee.....	723	31	9.00	55.99
Reno, Nev.....	Southern Pacific.....	692		7.125	46.31
La Grande, Oreg.....	Oregon-Wash. R. R. & Nav. Co.....	712		6.125	38.7
Goldfield, Nev.....	Tonopah & Goldfield.....	873	226	12.10	62.36
Heppner, Oreg.....	Oregon-Wash. R. R. & Nav. Co.....	809	45	6.875	34.42

<sup>1</sup> Based on an average load of 45 tons per car.

The exhibit from which the above figures were compiled sets out the rates and earnings thereunder from Castle Gate to 628 destinations in Utah, Nevada, California, Oregon, Montana, Idaho, Wyoming, and Washington. The average distance to 18 representative stations in Nevada on the Western Pacific is shown to be 440 miles, the average rate \$6.60, and the average revenue per car-mile 67 cents. The averages to 33 main-line stations on the Southern Pacific are 503 miles, \$6.76 per ton, and 60 cents per car-mile; and to 18 stations on the Los Angeles & Salt Lake, 420 miles, \$7.375 per ton, and 79 cents per car-mile. The car-mile earnings under the same rates from Rock Springs to Los Angeles & Salt Lake points would be considerably lower because of the much longer haul than from Castle Gate. Including 32 points on short lines in Nevada and 17 stations on Southern Pacific branch lines, the averages to 118 stations in that state are 535.6 miles, \$7.865 per ton, and 65 cents per car-mile. The averages to 60 stations in Idaho are 501.5 miles, \$5.29 per ton, and 47 cents per car-mile. To 18 stations in Montana, averaging 566.5 miles from Castle Gate, the average rate is shown to be \$5.38, and the average car-mile earnings 43 cents.

According to reports on file with the Public Service Commission of Nevada the average loading of all freight handled by the Southern Pacific to, from, in, and through Nevada for the year 1919 was 22.66 tons, the average haul was 373.95 miles, and the average car-mile earnings were 27.55 cents. On similar traffic on the Western Pacific the average loading per car was 30.86 tons, the average haul 323.95 miles, and the average car-mile earnings 23.05 cents. It is urged that coal is a low-grade, heavy-loading commodity, moved

largely at the convenience of the carrier, and is therefore more economical to handle than ordinary freight. Complainant argues that by contrast with the earnings on all traffic, increased to reflect the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, the coal traffic in Nevada is shown to be bearing far more than its fair share of the burden of transportation.

Evidence was offered by complainant to show that the transportation conditions in Nevada are in general more favorable than on the lines of carriers serving the states north thereof. Fewer adverse grades requiring helper service are encountered in the movement to main-line points on the Southern Pacific and Western Pacific in Nevada than to points in Idaho, Montana, and the northwest, thus permitting the Nevada carriers to operate trains with maximum tonnage. Some point was made by defendants of the sharp grade from Castle Gate to Soldier Summit, Utah, on the Denver & Rio Grande south of Salt Lake City, but coal, whether destined to points in Nevada or to the northwest, must pass over the same grade. Climatic conditions, particularly the absence of snow in winter, are also said to favor operations in Nevada. Evidence concerning the comparative operating conditions in that and other states was confined, so far as Nevada is concerned, to the territory traversed by the Western Pacific, Southern Pacific main line, and Los Angeles & Salt Lake. Little or nothing was said with respect to the conditions on the short or branch lines in Nevada. Based on the comparisons with rates to points in other states and the showing with respect to transportation conditions, the complainant asks for an average reduction of \$2 per ton to all points throughout the state.

As stated, the Nevada Consolidated Copper Company, intervener, is interested chiefly in the rate on slack coal from the Utah and southern Wyoming mines to McGill. The distances are 390 miles and 459 miles, respectively. The movement is principally from Utah mines. Prior to October, 1917, the rate on slack coal, also run of mine and nut, from both fields was \$3.50. In that month it was increased 15 cents, which was followed on June 25, 1918, by a further increase of 55 cents from Wyoming mines and 50 cents from Castle Gate. The increases of 1920 resulted in the present rate of \$5.25. The rate on lump coal is \$6.50.

In 1914 shipments of slack coal for the smelter at McGill aggregated 30,459 tons. The movement more than doubled in the following year, and in 1920 amounted to 157,238 tons. The tonnage of coal other than slack, i. e., run of mine, nut, and lump, aggregated 40,758 tons in 1914, and reached the maximum of 200,897 tons in 1918. In April, 1918, a coal-pulverizing plant was installed, using slack, and thereafter the movement of other grades

of coal declined materially. An exhibit submitted by the Western Pacific shows a movement of 251,327 tons of Utah coal to Nevada Northern points via Shafter in 1920, of which 144,547 tons consisted of slack. In the same period the Southern Pacific delivered to the Nevada Northern 5,443 tons of Wyoming coal and 1,088 tons of Utah coal. Under normal conditions the daily consumption of coal at McGill is 850 tons, or about 18 carloads, of which 85 per cent is slack.

Coal is also used by the Ely Light & Power Company at East Ely, a point on the Nevada Northern 13 miles south of McGill. Shipments to that company aggregated 2,900 tons in 1919 and about 2,000 tons in 1920, consisting principally of run of mine. Due to the closing of the copper properties there is but little movement at this time. The present rates to East Ely are \$5.50 on slack, \$5.875 on run of mine, and \$6.75 on lump.

The Nevada Consolidated Copper Company contrasts the rate of \$5.25 on slack coal to McGill, yielding earnings of 1.35 cents per ton-mile and 60.73 cents per car-mile from Castle Gate, and 1.14 cents per ton-mile and 51.47 cents per car-mile from Rock Springs, with rates on slack from the same mines to various other points where this grade of coal is used in smelting, milling, or mining operations. The rate on coal of all kinds, including slack, from Castle Gate to Anaconda, Mont., for illustration, is \$4.50. The distance is approximately 567 miles and the rate yields earnings of 7.93 mills per ton-mile and 35.71 cents per car-mile, based on 45 tons to the car. The rate from Rock Springs to the same point, a distance of 533 miles, is \$4, yielding 7.5 mills per ton-mile and 33.77 cents per car-mile.

The rate to McGill is also compared with a rate of \$3.25 on slack from Gallup, N. Mex., to El Paso, Tex., a distance of 367 miles, yielding ton-mile earnings of 8.9 mills and car-mile earnings of 40.05 cents, and with a rate of \$4.625 on slack from the same point to Hayden, Ariz., 531 miles, yielding 8.7 mills per ton-mile and 39.19 cents per car-mile. The lowest earnings shown on intervenor's exhibit are under a rate of \$4 from Dawson, N. Mex., to Tyrone, N. Mex., 636 miles, amounting to 6.4 mills per ton-mile and 28.30 cents per car-mile; and the highest under a rate of \$2.375 from Roundup, Mont., to Butte, Mont., 257 miles, amounting to 9.2 mills per ton-mile and 41.59 cents per car-mile. The car-mile earnings from Castle Gate to McGill average approximately 70 per cent more than the earnings to the points to which comparisons are made, although the distance to McGill is about 23 per cent less than the average to such other points.

The Nevada Consolidated Copper Company produces and sells its copper in competition with other companies mining or smelting copper ore at Anaconda, Hayden, El Paso, and other western points and claims to be entitled to rates on coal that are relatively no higher than are enjoyed by its competitors. It urges the establishment of a rate of \$3.25 to McGill which, from Castle Gate, would yield earnings of 8.3 mills per ton-mile and 37.5 cents per car-mile, slightly in excess of the average car-mile earnings to 15 western points named in its exhibit. These western copper plants, probably without an exception, have temporarily discontinued operations, due to the fact that the expense of production exceeds the price at which copper can now be sold.

The Nevada Northern, which handles the traffic between McGill and its connections with the Southern Pacific at Cobre and the Western Pacific at Shafter, is owned by the Nevada Consolidated Copper Company and 85 per cent or more of its business consists of traffic to or from the mines and smelter of that company. It was constructed to serve the Copper company and will probably discontinue operations when the ore has been exhausted, estimated to be in from 16 to 20 years.

Defendants freely admit that the rates on coal to Nevada are higher than to points in the northwest generally, and undertake to justify this disparity by the relatively light tonnage to Nevada, the higher percentage of empty return haul, and the lack of competition, which, it is said, has resulted in depressing the rates to the north and west. The record shows that in 1920 the return empty movement of coal cars from Nevada on the Western Pacific was 92 per cent; in January and February, 1921, on the Los Angeles & Salt Lake, between 80 and 85 per cent; and on the Southern Pacific in September, 1920, 67 per cent. The eastbound movement of lumber and forest products from California, Oregon, and Washington resulted in a materially less empty return haul from those states.

The rates on coal from southern Wyoming and Utah to northwestern points are governed largely by the rates applying from competing mining districts in Wyoming, Montana, Washington, and western Canada. Coal is produced at Kemmerer, Wyo., 85 miles northwest of Rock Springs on the Oregon Short Line; at Kirby and Sheridan in northern Wyoming, on the Chicago, Burlington & Quincy Railroad; at Roundup and various other points in Montana; and at a number of points in Washington and western Canada. The coal from these different districts, except that mined in Washington and Montana, is of about the same character as the southern Wyoming and Utah coal. Washington and Montana coal is of an inferior grade.

Rates from Rock Springs and Kemmerer to points in southern Idaho were considered in *Idaho Commercial Clubs v. O. S. L. R. R. Co.*, 18 I. C. C., 562. The average distance from the mines to the particular points there concerned was 389 miles and the rates of \$3.75 and \$4, then in effect, were found unreasonable to the extent that they exceeded \$3.50 per ton. The present rate of \$5.25 from Rock Springs to these points, for an average distance of 432 miles, reflects the increase of 15 cents per ton, authorized in *The Fifteen Per Cent Case*, 45 I. C. C., 303; the increase of 50 cents per ton made by the Director General June 25, 1918, in rates on coal amounting to \$3 or more; and the 25 per cent increase approved in *Increased Rates, 1920, supra*. In *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 213, the rates from Utah to these points were fixed on the basis of 25 cents per ton over the Rock Springs rates.

Rates on coal to other points in the northwest were prescribed in *Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co.*, 26 I. C. C., 638, and 28 I. C. C., 250. Among the rates therein considered were those from Sheridan and Red Lodge, Mont., to points on the line of the Northern Pacific and its connections in Montana, Idaho, Washington and Oregon. Red Lodge is 59 miles southwest of Billings on the Northern Pacific, and Sheridan is 143 miles southeast of Billings on the Chicago, Burlington & Quincy. In our supplemental report, we found that by establishing rates from Sheridan 55 cents per ton over those from Red Lodge to destinations within 500 miles of Sheridan, both mining fields would be placed upon approximately the same per ton-mile basis. The rate from Sheridan to Anaconda, a typical destination in this territory and one referred to particularly by complainant, thus became \$2.55, and is now by virtue of the three general increases \$3.875 per ton. This rate yields earnings of 43 cents per car-mile for a distance of 405 miles from Sheridan. To yield the same earnings on traffic from Rock Springs would require a rate of approximately \$5.10, as compared with the present rate of \$4.

The reduction in the rate from Sheridan to Anaconda and other points in 1913 was met by reductions from Rock Springs and Castle Gate in order to permit the operators in those fields to compete with the mines in Montana and northern Wyoming. Apparently the competitive situation remains the same as it is to be observed that the rate from Rock Springs to Anaconda, via the line of the Oregon Short Line extending northward from Pocatello, is substantially lower than the rates to points west of Pocatello resulting from the decision in *Idaho Commercial Clubs v. O. S. L. R. R. Co., supra*.

It is unnecessary for the purpose of this report to discuss in detail the evidence relating to the rates to the north Pacific coast and to San Francisco. Those rates are considerably lower, considered with

respect to the lengths of haul, than apply to Nevada destinations. At Portland, Oreg., for example, Utah and southern Wyoming coal comes in competition with coal mined in Washington and British Columbia, and with cordwood, which is used extensively for fuel purposes. Prior to 1911 the competitive rate to Portland was maintained as a terminal rate only and higher rates were in effect to intermediate points. In that year the departure from the long-and-short-haul provision of the fourth section was removed by increasing the Portland rate. The present rate of \$6.125 from Rock Springs to Portland is said to yield the lowest return of any traffic handled by the Union Pacific system. Competition at San Francisco is less severe than at Portland and the rate is therefore somewhat higher, being \$7.25 from Rock Springs and Castle Gate for a distance of approximately 1,000 miles. The San Francisco rate is blanketed back nearly to Reno, 233 miles on the Southern Pacific and 340 miles on the Western Pacific.

The record clearly shows that Nevada is surrounded by states to which the general level of coal rates is materially lower. Prior to August 26, 1920, rates from Castle Gate to points in western Utah applied also for considerable distances into Nevada. A rate of \$5.10 was blanketed from Olney, Utah, as far west as Tule, Nev., a distance of approximately 60 miles in Utah and 235 miles in Nevada. The rate to the points in Utah is still \$5.10, but to the points in Nevada formerly included in the same blanket it is now \$6.375, or \$1.275 higher. A similar adjustment was in effect on the Western Pacific and one substantially similar on the Los Angeles & Salt Lake. The abrupt increase at the state line is accounted for by the fact that the Utah rates were not made subject to the increases under *Increased Rates, 1920, supra*. In *Utah Rates, Fares, and Charges*, 60 I. C. C., 388, we found that, considered with respect to the actual haul, coal rates in that state were reasonably high, and increases therein corresponding to the increases in interstate rates were not required. It was noted in that case that the former parities were the result of voluntary adjustments made by the carriers themselves.

On the north, rates from Rock Springs to points in Idaho, prescribed in *Idaho Commercial Clubs v. O. S. L. R. R. Co., supra*, as changed by the general increases, are lower than for corresponding distances from Rock Springs or Castle Gate to destinations in Nevada. The present rate of \$5.25 from Rock Springs to the 12 points concerned in that proceeding, averaging 432 miles in distance, yields 54 cents per car-mile, which may be compared with the rate of \$6.375 from Castle Gate to Battle Mountain, Nev., 460 miles, yielding 62.43 cents per car-mile. In accordance with *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co., supra*, the rates from Castle Gate to

the Idaho points are 25 cents higher than from Rock Springs, for distances about 22 miles greater than from Rock Springs.

On the south Arizona enjoys a more favorable rate basis than Nevada. Rates to Arizona points were prescribed in *Maricopa County Commercial Club v. P. & E. R. R. Co.*, 22 I. C. C., 221, and *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 428. In the former a rate of \$3.60 was prescribed from Gallup, N. Mex., to Mesa, Ariz., a distance of 452 miles. The rate on lump is now \$5.38, which may be compared with the rate of \$6.50 on lump from Castle Gate to McGill, 390 miles, or the rate of \$6.375 blanketed from Tecoma to Tule, an average distance of about 390 miles. The rates on slack to Mesa and McGill are \$4.63 and \$5.25, respectively. Rates on coal from Gallup to practically all consuming points in Arizona were considered in *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, *supra*. A typical rate is that from Gallup to Bowie, 500 miles, which, under the general increases, is now \$5.88 per ton. The rate from Castle Gate to Winnemucca, 511 miles, is \$6.75.

No objection has been made by the parties to the present grouping of stations in Nevada and no change therein appears necessary. We see no objection to the voluntary equalization of rates from Castle Gate and Rock Springs to all points in Nevada, but we can not prescribe the same rates from Rock Springs that would be reasonable from Castle Gate to points on the Los Angeles & Salt Lake, because of the much greater difference in distance from the two districts to points on that line than to points on other lines in Nevada. As the conditions affecting transportation on the Southern Pacific branch lines and on the short lines in Nevada, except the Nevada Northern, are not stated, no finding will be made with respect to the rates to points on such lines.

We find that the present rates on coal, in carloads, from the Castle Gate district in Utah and from Rock Springs, Wyo., to stations in Nevada on the main line of the Southern Pacific, on the Western Pacific, and to McGill, East Ely, and other points on the Nevada Northern, also from the Castle Gate district to Nevada points on the main line of the Los Angeles & Salt Lake and to Pioche, Nev., are unreasonable and that reasonable rates for the future will be the following amounts per ton of 2,000 pounds: To points between Tecoma and Tule, inclusive, on the Southern Pacific, and between Ola and Golconda, inclusive, on the Western Pacific, \$5.50; to Winnemucca \$5.90; to points between Benin and Reno, inclusive, on the main line of the Southern Pacific, and between Krum and Reno, inclusive, on the Western Pacific, \$6.25; to points on the Los Angeles & Salt Lake between Lien and Caliente, inclusive, also to Pioche, \$5.60; to Etna, Taylor Spur, and Stine, \$6.60; to points between

Boyd and Roach, inclusive, on the main line of the Los Angeles & Salt Lake, \$7; to McGill and intermediate points on the Nevada Northern, \$5.60 on lump and \$4.60 on slack, run of mine, and nut; and to East Ely and points beyond on the Nevada Northern, rates that exceed the foregoing rates to McGill by the amounts which the present rates to those points exceed the present rates to McGill.

The above findings are without prejudice to the conclusions which may be reached in any other proceedings as to the general level of the rates on coal in this territory.

An appropriate order will be entered.

66 I. C. C.



No. 11885.

## WEST KENTUCKY COAL BUREAU

v.

## ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

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*Submitted January 18, 1922. Decided February 11, 1922.*

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On further hearing original findings in 62 I. C. C., 686, modified to permit the establishment and maintenance of a rate of not more than \$1.985 per ton on coal from western Kentucky via Thebes, Ill., to Festus and Crystal City, Mo., provided such rate is not exceeded at intermediate points.

*J. V. Norman* for complainant.

*E. A. Smith* for defendants.

## REPORT OF THE COMMISSION ON FURTHER HEARING.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

*Esch, Commissioner:*

In our original report, 62 I. C. C., 686, we found that defendants' rates on coal, in carloads, from mines on the Illinois Central in western Kentucky to points in southeastern Missouri and northeastern Arkansas, on and east of the line of the St. Louis-San Francisco, hereinafter called the Frisco, from Festus, Mo., through Poplar Bluff, Mo., to Marion, Ark., were unduly prejudicial to complainant's members and unduly preferential of coal-mine operators in southern Illinois, to the extent that they exceeded the rates contemporaneously maintained by defendants from mines in the southern Illinois group to the same destinations by more than 25 cents per ton of 2,000 pounds. An order was entered requiring the removal of such undue prejudice and preference on or before October 29, 1921.

On October 19, 1921, defendants applied for a modification of the order to permit the establishment of a rate of \$2.15 per ton from western Kentucky to Festus and Crystal City, Mo., upon the ground that rates could not be established to those points based on the 25-cent differential over the existing rates from southern Illinois without violating the long-and-short-haul rule of the fourth section. On November 8, 1921, the case was reopened for further hearing solely with respect to the rates to Festus and Crystal City and intermediate points, our order being vacated in so far as it affected the rates to Festus and Crystal City. Rates are stated in amounts per ton of 2,000 pounds,

66 I. C. C.

Festus and Crystal City are 39 and 40 miles, respectively, south of St. Louis, Mo. via the Frisco, but the short route from western Kentucky to these points crosses the Mississippi River at Thebes, Ill., and runs north via the Frisco. When the complaint was filed and at the time of the original hearing, defendants' rate of \$1.895 from the southern Illinois group to Festus and Crystal City, applicable via Thebes, was the same as to intermediate points south thereof, Bainbridge to McCoy, Mo., inclusive. Subsequent to the original hearing, effective December 30, 1920, defendants canceled the \$1.895 rate to Festus and Crystal City and published to those points a rate of \$1.56 from southern Illinois via St. Louis, in connection with the Terminal Railroad Association of St. Louis. Defendants published the \$1.56 rate to meet a similar rate maintained by other lines to Festus and Crystal City. The \$1.895 rate from southern Illinois via Thebes, as increased to \$1.90 under special permission No. 50643, is still in effect to the stations Bainbridge to McCoy, inclusive. The rate of the Illinois Central from western Kentucky to St. Louis, which was not in issue in this case, is \$2. Defendants elected to comply with our original order without changing the existing rates from southern Illinois, and, effective October 29, 1921, published rates from western Kentucky of \$2.15 to the stations Bainbridge to McCoy, inclusive, and \$1.81 to Festus and Crystal City, applicable via Thebes. Following our order vacating the original order as to the rates to Festus and Crystal City, defendants canceled the \$1.81 rate to those points, effective January 20, 1922, leaving in effect only the higher combination rates originally assailed and condemned.

At the further hearing defendants asked that they be permitted to publish a rate of \$1.985 from western Kentucky via Thebes to Festus and Crystal City and to the intermediate points, Bainbridge to McCoy, inclusive. The proposed adjustment would avoid departures from the fourth section, result in a difference of 42.5 cents over the present rate from southern Illinois to Festus and Crystal City, and reduce the rate to the intermediate points from \$2.15 to \$1.985. It is satisfactory to the complainant, both parties agreeing that it shall be subject to any readjustment growing out of our decision in *The Illinois Coal Cases, 1920*, 62 I. C. C., 741.

Our original findings, otherwise adhered to, will be modified to the extent of permitting the establishment and maintenance of a rate of not more than \$1.985 from western Kentucky via Thebes to Festus and Crystal City, provided such rate is not exceeded at intermediate points; and an order will be entered authorizing the establishment of such rate to all points between Festus and Bainbridge, inclusive, on five days' notice.

INVESTIGATION AND SUSPENSION DOCKET No. 1430.  
CONSTRUCTIVE MILEAGE FOR BRIDGE OVER HUDSON  
RIVER AT POUGHKEEPSIE, N. Y.

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*Submitted December 28, 1921. Decided January 30, 1922.*

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Proposal in respondents' distance tariff to add 100 constructive miles for crossing the Hudson River by bridge at Poughkeepsie, N. Y., found not justified. Suspended schedules ordered canceled and proceeding discontinued.

*W. W. Meyer* for respondents.

*Arthur B. Hayes* and *Hugh F. Smith* for Seaboard By-Product Coke Company; *W. H. Chandler* for Boston Chamber of Commerce and New England Traffic League; *C. J. Fagg* for Newark Chamber of Commerce and New Jersey Industrial Traffic League; *James C. Lincoln* for Merchants Association of New York and Philadelphia Chamber of Commerce; *Frank E. Grace* for Brooklyn Chamber of Commerce; *J. H. Cull* and *E. A. Gallman* for Chamber of Commerce of Paterson, N. J.; *P. W. Moore* for Queensboro Chamber of Commerce; *F. E. Paulson* and *W. F. Clark* for Lehigh Portland Cement Company; *C. H. Reigart* for Dexter Portland Cement Company and others; and *C. R. MacCarey* for Hercules Cement Corporation, protestants.

*W. G. Rich*, *Francis B. James*, *E. E. Williamson*, and *Ewing H. Scott* for Providence Gas Company; *Allen McCarty* and *Walter Young* for Atlas Portland Cement Company; and *W. J. Lavelle* for New England Coal & Coke Company and New England Fuel & Transportation Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective October 29, 1921, respondents propose to add 100 constructive miles in computing the distance between points on the Central New England, a part of the New York, New Haven & Hartford system, west of the Hudson River and points on lines of that system east of the river, which in effect means an addition of 100 constructive miles for crossing the Hudson River by bridge at Poughkeepsie, N. Y. Upon protest of the chambers of

66 I. C. C.

commerce of Boston, Mass., and Newark, N. J., the New Jersey Industrial Traffic League, and the Seaboard By-Product Coke Company of Seaboard, N. J., the schedules were suspended until March 28, 1922. Other protestants appeared at the hearing; and several New England coke companies and a cement company with a plant at Hudson, N. Y., east of the Hudson River, appeared in support of respondents' proposal.

In 1871 a company was organized for the purpose of erecting a bridge over the Hudson River at Poughkeepsie. Construction was commenced in 1876, suspended in 1878, resumed in 1886, and completed in 1888. The bridge was opened for local traffic on December 31, 1888, and for through traffic in July, 1889. In 1892 the property of the bridge company was sold under foreclosure, the purchasing corporation was merged with the Central New England & Western, and a new company was formed to own and operate the rail line from Campbell Hall, N. Y., to the west-bank terminus of the bridge, the bridge itself and the rail line from the east-bank terminus of the bridge to Silvernails, N. Y. This company, as a result of successive consolidations and leases of various short lines, constitutes the present Central New England and approximately 93 per cent of its tonnage passes over the bridge.

This bridge is of steel, about 1.282 miles long, and 212 feet above mean high-water mark. The river spans are 3,093.75 feet in length and the east and west approaches 2,640 and 1,033.5 feet, respectively. It was built for double-track service, but because of the heavier power and larger equipment now used, is operated practically as a single-track bridge.

The proposal to add 100 constructive miles for movement over the bridge is an outgrowth of *Seaboard By-Product Coke Co. v. Director General*, 62 I. C. C., 317, which required respondents and their connections to establish and maintain carload rates on coke from Seaboard to destinations in New York and New England via the Poughkeepsie bridge route on the basis of the so-called Providence distance scale extended to distances of 600 miles. This was the only instance in which a distance scale of rates had been made applicable on a commodity moving from trunk line territory to New England. The Providence scale was originally made effective early in 1919 on coke from Providence (Harbor Junction wharf), R. I., for distances up to 325 miles. Respondents endeavored to convince the two initial roads out of Seaboard, the Delaware, Lackawanna & Western and the Erie, that in publishing rates in compliance with our order in the case cited, 100 constructive miles should be added for movement over the Poughkeepsie bridge. The initial carriers declined to adopt this view, which was opposed to the letter and

spirit of our report and order, and specific rates based on the actual distances from Seaboard became effective November 1, 1921. Respondents also applied for a reopening of the case cited in order that evidence of the cost of constructing and maintaining the bridge might be offered, but the application was denied. In the meantime respondents had filed the suspended schedules. They contend that the Providence scale was not intended for application over a route of such costly construction as that over the bridge, and seek to justify the proposal to add constructive mileage on the ground that the cost of constructing and maintaining the bridge exceeds similar costs for 100 miles of ordinary railroad track.

The construction ledger of the original company shows the cost of the bridge as \$9,900,000. This figure apparently represents the par value of the securities issued by the bridge company. It is not shown what proceeds were realized from the sale of these securities or what portion thereof was expended in construction of the bridge. Respondents' bridge engineer estimated its original cost as \$6,332,660. No satisfactory analysis of the methods used in making this estimate was given.

The cost of reproduction new as of June 30, 1916, is shown by preliminary reports of our bureau of valuation, here in evidence, to be \$3,940,194. Based on figures contained in the same reports respondents contend that the average cost of reproduction new per mile of the best double-track road on the Central New England is \$38,703, and of single-track road, \$29,320. From these figures they deduce that approximately 102 miles of double-track road or 134 miles of single-track road could be reproduced for the same amount as would be necessary to reproduce the bridge new. The cost of reproduction new, less depreciation, as shown by the reports referred to, is over a million dollars less than the cost figure used by respondents in their calculations. These preliminary reports were submitted to the carriers for criticism before submission to us, have not been considered in any way by us, and are not conclusive as to what the final figures will be.

The net operating cost of maintaining a mile of single track on the Central New England, exclusive of buildings, telephone and telegraph lines, signals, and joint facilities, plus interest, is \$2,948 per annum. The average cost of maintenance of the bridge over a period of seven years was \$338,409 per annum, which, respondents contend, is equivalent to the cost of maintaining 114.8 miles of single track. Without the exclusions referred to above, the cost of maintaining a mile of track is \$3,281 per annum, and on this basis respondents claim that the cost of maintaining the bridge is equivalent to that of maintaining 103 miles of single track.

If the cost of constructing and maintaining a bridge is 100 times greater than that for a mile of track, it does not follow that 100 constructive miles should be allowed for movement over the bridge in computing distance, upon which to base rates for transportation. Obviously the operating costs over 100 miles of ordinary track are much greater than over a bridge 1 mile long. Respondents apparently gave no consideration whatever to this feature. Nor have they proposed the addition of constructive mileage for other facilities of unusual cost, such as the Boston terminals, the bridge at New London, Conn., and the track-elevation work at Bridgeport, Conn. Constructive mileage is not added for the bridge crossing over the Hudson at Albany, N. Y.

The only local movement under distance rates between stations east and west of the bridge is of sand from West Pawling, N. Y., to Loyd, N. Y. In order to obviate increase in those rates through the proposed addition of constructive mileage respondents published specific rates based on the actual distance from West Pawling to Loyd. This is not consistent with their position in this proceeding.

Evidence was offered of the effect which the addition of constructive mileage would have upon rates on coke from Seaboard. For example, the protestant located at that point shows that, on the average annual shipments made by it from 1918 to 1920, inclusive, and moving over the bridge, the freight charges would be \$54,980.70 at the rates in effect prior to November 1, 1921, \$48,615.23 at the present rates, and \$55,813.70 with the addition of 100 constructive miles. Charges on the latter basis would be \$7,198.47, or over 14 per cent, more than on the basis prescribed in *Seaboard By-Product Coke Co. v. Director General, supra*. Protestants also claim that the use of the proposed constructive mileage in making rates from Seaboard would result in undue preference of coke from the Connellsville, Pa., district to New England. We have passed upon the coke rates from Seaboard to New England in the case cited, and as a result of our order therein specific rates have been published. These rates would still remain in effect if the suspended schedules became effective, although it appears to be respondents' purpose to ultimately bring about, if possible, an increase in these rates by use of the proposed constructive mileage. No specific rate is directly involved in this proceeding, but potentially it affects every class and commodity rate which might in the future be established on a distance basis over the bridge route. Respondents and those who favored their proposal to add constructive mileage cite cases in which we approved the addition of bridge arbitraries or allowances for river crossings. In all of those cases the measure of specific rates, or passenger fares, or a rate adjustment, was directly in issue and considered by us. Whether rates resulting from the use of

the proposed constructive mileage would be reasonable or unreasonable, to what extent it would be used in the construction of rates, or what revenue would accrue to respondents from its use are all matters of speculation. Competitive and other conditions would have to be considered in connection with each rate. The extent to which the constructive mileage would be used is impossible of determination at the present time. We are not warranted in giving approval to a proposal so vague, indefinite, and uncertain in its effect.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

66 I. C. C.

No. 9086.

CHANNEL CHEMICAL COMPANY

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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Submitted July 11, 1921. Decided January 23, 1922.

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1. Rates from Chicago, Ill., to Pacific coast terminals on O-Cedar polish in glass, boxed, and in metal cans, boxed, in carloads, and on mops, in carloads and less than carloads, found unreasonable. Reasonable rates prescribed.
2. Rates from and to the same points on mop handles, in less than carloads, found not unreasonable. Original report 55 I. C. C., 733.

*Luther M. Walter and John S. Burchmore* for complainant.*D. F. Lyons, B. W. Scandrett, and H. G. Toll* for defendants.

## REPORT OF THE COMMISSION ON SUPPLEMENTAL HEARING.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

In the original report in this and a related case, *Portland Traffic & Transportation Asso. v. B. & M. R. R.*, 55 I. C. C., 733, decided December 26, 1919, we found, among other things, that defendants' rates applicable on O-Cedar polish in glass, boxed, and in metal cans, boxed, and on mops, in carloads and less than carloads, and on mop handles, in less than carloads, from Chicago, Ill., to Pacific coast terminals had been unreasonable to the extent indicated, and awarded reparation on shipments that moved prior to August 3, 1916, the date of the filing of the original complaint. Rates for the future were not prescribed, further hearing appearing necessary because of the "comprehensive and radical readjustments in transcontinental rates, due in part to our decisions in the *Intermountain Rate Cases* and in part to the great changes in transportation conditions caused by the war." Upon petition of complainant further hearing was held July 8, 1920, with respect to rates for the future.

Rates will be stated in amounts per 100 pounds, and do not include the general increase of 1920.



## O-CEDAR POLISH.

Prior to June 25, 1918, the first-class rate of \$3.40, less than carloads, and the fourth-class rate of \$2.07, carloads, applied on O-Cedar polish in the containers above named. On June 25, as a result of general order No. 28 of the Director General of Railroads, these rates were increased to \$4.25 and \$2.59, respectively. Effective December 31, 1919, a less-than-carload commodity rate of \$2.675 was established. Defendants ask approval of these rates of \$2.59 and \$2.675. The class rates in effect prior to June 25, 1918, are those which were applicable during the greater part of the reparation period covered by the original report.

Complainant refers to the numerous articles mentioned at the previous hearing, including a number of liquids rated first or second class in less than carloads, when in glass or earthenware, boxed, or in metal cans, boxed, to most of which defendants have continued to accord commodity rates, those rates being \$2.81, or slightly higher, in less than carloads, and from \$1.44 to \$1.75 in carloads, from Chicago to Pacific coast terminals. These rates include increases of about 15 cents, carloads, and 25 cents, less than carloads, made effective March 15, 1918, to remove fourth section violations, following *Transcontinental Commodity Rates*, 48 I. C. C., 79, and the 25 per cent increase under general order No. 28.

In our original report we found that the applicable rates on O-Cedar polish had been unreasonable to the extent that they exceeded \$1.30, carloads, and \$2.35, less than carloads. It will be observed that the latter rate increased by 25 per cent exceeds the less-than-carload commodity rate of \$2.675 established December 31, 1919.

Immediately prior to March 15, 1918, a rate of \$1.30 applied on this commodity in carloads from the Missouri River to points intermediate to the Pacific coast terminals. Under the differential adjustment prescribed by us in fourth section order No. 124, the rate to the same points from Chicago would be \$1.45, or 15 cents higher than the Missouri River rate. To the terminals this rate of \$1.45 apparently would accord with the adjustment effected March 15, 1918, in commodity rates generally to those terminals. Increased 25 per cent to comport with general order No. 28, the rate would be \$1.815.

Upon this record we find that the less-than-carload commodity rate of \$2.675 on O-Cedar polish, plus the 33½ per cent increase authorized in *Increased Rates, 1920*, 58 I. C. C., 220, is not unreasonable, but that the carload rate is, and for the future will be, unreasonable to the extent that it exceeds or may exceed \$1.815, plus the 33½ per cent increase authorized July 29, 1920.

## MOPS.

The third-class rate of \$2.45, carloads, minimum 20,000 pounds, and the second-class rate of \$2.95 in less than carloads, applied on mops prior to June 25, 1918. On that date they were increased under general order No. 28 to \$3.065 and \$3.69, respectively.

Defendants urge that the application of the class rate on mops in less than carloads should be continued for the reason that to points intermediate to the terminals from Chicago there are no less-than-carload commodity rates maintained on this article, and contend that in any event the rate should not be less than the present rate of \$2.81 on brooms in less than carloads. On mops in carloads defendants suggest a rate of \$2.65, obtained by projecting the rate of \$2.10 applicable on that commodity from Chicago to Salt Lake City, Utah. The latter rate less the increase under general order No. 28 was found justified in *Class and Commodity Rates to Salt Lake City*, 32 I. C. C., 551.

In the original report we found that the rates on mops had been unreasonable to the extent that they exceeded \$1.50, minimum 30,000 pounds, in carloads, and \$2 in less than carloads. Applying to these rates the increases of 15 cents, carloads, and of 25 cents, less than carloads, which were made by defendants in commodity rates generally to remove violations of the fourth section following *Transcontinental Commodity Rates, supra*, and the 25 per cent increase under general order No. 28, the resulting rates are \$2.065, carloads, and \$2.815, less than carloads. These rates do not compare unfavorably with the rates on numerous other articles before referred to in connection with the rates on O-Cedar polish.

We find that the rates on mops are, and for the future will be, unreasonable to the extent that they exceed \$2.10 in carloads, and \$2.81, less than carloads, plus the 33½ per cent increase authorized July 29, 1920.

## MOP HANDLES.

In the original report we found that a less-than-carload commodity rate of \$2 on mop handles, established October 18, 1915, was not unreasonable. On March 15, 1918, following our decision in *Transcontinental Commodity Rates, supra*, this rate was increased to \$2.14, and on June 25, 1918, as a result of general order No. 28, was further increased to \$2.675. This rate, as increased 33½ per cent, we find to be not unreasonable.

An appropriate order will be entered.

66 I. C. C.

No. 11740.

TENNESSEE COPPER COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ALABAMA &amp; VICKSBURG RAILWAY COMPANY, ET AL.

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*Submitted July 9, 1921. Decided January 23, 1922.*

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Charges for the return transportation in tank cars of sulphuric-acid sediment of no commercial value, to Copperhill, Tenn., from various points, found unreasonable. Reparation awarded.

*Arthur B. Hayes* for complainant.*Henry Thurtell* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, makes sulphuric acid at Copperhill, Tenn. By complaint filed August 18, 1920, it alleges that it was unreasonable to impose, during the period from June 1, 1918, to March 1, 1919, a charge for the return transportation of sulphuric-acid sediment in tank cars to Copperhill from points of destination of shipments of sulphuric acid in the states of Alabama, Georgia, Missouri, West Virginia, New York, Wisconsin, South Carolina, North Carolina, Tennessee, Illinois, Ohio, Indiana, Virginia, Pennsylvania, New Jersey, and Florida. We are asked to award reparation.

Under the present manufacturing processes it is impracticable to remove certain impurities in sulphuric acid prior to shipment. They accumulate in the bottom of the car at the rate of from 200 to 500 pounds per trip and are known as acid sediment or sludge. The destructive character of the acid necessitates prompt unloading. This is effected through the top of the car by air pressure. Only such impurities as happen to be in suspension in the liquid can be removed in this manner. It is impracticable for the remainder to be removed by the consignee.

The usual method of cleaning cars at complainant's plant is by flushing them with water, but in some instances it is necessary to

66 I. C. C.

remove the sediment with a shovel. The cost of cleaning is approximately \$5 per car. As a mixture of water and acid is very destructive to the lining of the car, cleaning and drying have to be done rapidly. Frequent cleaning shortens the life of the car. Complainant has facilities for cleaning nine cars per day, and under pressure can clean as many as 12. Cleaning usually takes a car out of service 24 hours.

Prior to the war it was not customary to clean a car after each trip, but to wait until a substantial amount of sediment had accumulated. During the war there was demand for the maximum production of sulphuric acid for use in the manufacture of explosives and cleaning was done even less frequently. The average weight of sediment in the cars returned during the period covered by the complainant was 1,296 pounds. In some cases the weight was as much as 4,000 or 5,000 pounds and in one case approximately 9,000 pounds. Complainant's outbound shipments averaged about 20 cars per day and empties were returned to it in numbers varying from 2 to 40 cars per day.

No charge was made on the return movements of sediment until June 1, 1918. On and after that date fifth-class rates, applicable on less than carloads of sulphuric acid, were assessed in accordance with the following provision published in the southern classification, effective September 8, 1917:

On that portion of a tank car shipment of sulphuric acid or oil of vitriol, remaining in the tank car after partial unloading at the destination, and returned in the original tank car to the original shipping point, the L. C. L. rates on shipments in barrels will be applied, based on actual weight, \* \* \*.

There was no explanation of the failure to apply this rule prior to June 1, 1918. It remained in effect until February 20, 1919, when the following rule was published:

On that portion of a tank car shipment of sulphuric acid or oil of vitriol, remaining in the tank car after partial unloading at destination, and returned in the original tank car to the original shipping point, the L. C. L. rates on shipments in barrels will be applied, based on actual weight, \* \* \* except that if the remaining substance is without commercial value and there is no recovery, nor commercial consideration given to the substance by the shipper or consignee, the weight thereof need not be declared, and no charge shall be made therefor.

A somewhat similar provision was published in consolidated classification No. 1 and is now in effect.

The fifth-class rates on returned acid sediment were much higher than the outbound carload commodity rates on sulphuric acid. For example, the rate on acid from Copperhill to Atlanta, effective June 25, 1918, was \$1.90 per ton, equivalent to 9.5 cents per 100 pounds;

that on returned acid sediment was 45 cents per 100 pounds. Other illustrative rates are as follows: To Montgomery, Ala., \$2.50 per ton on sulphuric acid as against 69 cents per 100 pounds on sediment; to Cincinnati, Ohio, \$2.50 as against 70 cents; to Savannah, Ga., \$4.10 as against 94 cents; and to Richmond, Va., \$5 as against 92.5 cents.

In *New Jersey Zinc Co. v. Director General*, 61 I. C. C., 432, we prescribed the following rule:

If tank cars are not completely unloaded at destination, and the remainder of the lading is returned in the same car to the original shipping point, the weight thereof must be declared by the receiver, and the rating applicable on the same article in less-than-carload quantities in bulk in barrels shall apply, the charge not to exceed the charge for a carload of the same freight in tank cars; except that if no commercial consideration is given to the remaining substance, by means of a credit allowance or otherwise, or the substance is removed from the car and discharged as waste before a subsequent shipment is made therein, the weight thereof need not be declared, and no charge shall be made therefor.

No commercial consideration was given to the sediment upon which reparation is asked. Complainant sold the acid f. o. b. Copperhill, received payment only for the weight of the acid unloaded at destination, and paid and bore both the freight charges on the weight of the sediment outbound and the freight charges assailed.

We find that the imposition of charges for the return transportation of the acid sediment in complainant's shipments was unjust and unreasonable; that complainant paid and bore the charges so unreasonably imposed; that it has been damaged thereby in the full amount of such charges; and that it is entitled to reparation in that amount. Complainant should comply with rule V of the Rules of Practice.

66 I. C. C.

No. 12021.

EXCELSIOR SHOOK & LUMBER COMPANY,  
INCORPORATED,

v.

SEABOARD AIR LINE RAILWAY COMPANY ET AL.

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*Submitted May 26, 1921. Decided January 23, 1922.*

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Demurrage charges on shipments of lumber from Lovelace, Ga., consigned to complainant at Norfolk, Va., "Belt Line delivery," and held by line-haul carrier for payment of freight charges and disposition orders before turning over to switching line, found unlawful in part. Reparation awarded.

*Robert D. Burbank* for complainant.

*Frank W. Gwathmey* for Seaboard Air Line Railway Company, Georgia Railroad, and Washington & Lincolnton Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Seaboard Air Line to the report proposed by the examiner.

Complainant is a corporation engaged in buying and selling lumber, with offices at New York City. By complaint filed December 9, 1920, it alleges that the demurrage charges collected on three carloads of lumber shipped from Lovelace, Ga., to it at Norfolk, Va., were unjust, unreasonable, and illegal, in violation of sections 1 and 6 of the interstate commerce act. We are asked to award reparation.

The shipments were consigned on straight bills of lading to complainant at Norfolk and routed "cheapest for Belt Line delivery." They moved via the Washington & Lincolnton to Washington, Ga., the Elberton & Eastern to Elberton, Ga., and the Seaboard Air Line, hereinafter called defendant, to Portsmouth, Va., where they arrived, two on August 9 and one on August 12, 1920. Defendant, instead of turning the cars over to the Norfolk & Portsmouth Belt Line, a carrier performing switching service at Portsmouth and Norfolk, hereinafter called the Belt Line, held them on its rails at Portsmouth for payment of transportation charges and for disposition orders and mailed notices of arrival to complainant at Norfolk.

As complainant had no offices at that point, these notices were never received by it. Having finally ascertained the correct address, defendant, on August 23, 1920, communicated with complainant and promptly received instructions to deliver the cars to the American Box & Lumber Company, a concern located on the Belt Line in Norfolk, which delivery was effected after the payment of transportation, reconsignment, demurrage, and penalty charges. On the two cars which arrived August 9 there appears to be a demurrage overcharge of \$5 each.

A joint rate applied from point of origin to Norfolk, defendant's tariffs providing for the absorption of \$3 of the Belt Line's switching charge of \$4.

The questions first to be considered are (1) whether complainant gave the Belt Line disposition orders covering the cars; and (2) whether defendant made inquiry of the Belt Line respecting the receipt of such disposition orders.

With respect to the first question, we have of record the carbon copies of letters dated August 6 and 16, addressed by complainant to "Agent, Belt Line Railroad, Norfolk, Va.," in which instructions were given to turn the cars over on arrival to the American Box & Lumber Company of that city. These carbon copies were found in complainant's files by its secretary, and were written by the vice president during the secretary's absence. The vice president died prior to the hearing. There are also of record similar carbon copies addressed to the Atlantic Coast Line, the Norfolk Southern, and the Southern, and in a letter from defendant to complainant dated August 30, 1920, mention is made of the receipt by the Southern of two of the letters addressed to it. These carbons constituted records made in the regular course of business, and substantiated as they are by the witness' recollection of conversations with the writer, they are properly before us, and in view of the fact that the Belt Line disclaims having received the originals, they constitute the best evidence on this point available to complainant.

The testimony introduced to show that the Belt Line had never received these instructions consisted of copies of letters written by the Belt Line to defendant under dates of December 31, 1920, and January 14, 1921, introduced by a witness for the latter, in which it is stated, "we have no record of receiving any information from the Excelsior Shook and Lumber Company, but had letter been received we would have advised them that it would be necessary for them to notify the agent of the road over which these cars would arrive at Norfolk, as they would hold cars for orders and payment of all charges." It should be observed that these letters were written five months after the arrival of the cars, in fact after the filing of

the complaint, that they are copies, and that they were introduced by the recipient. The weight to be given them is further impaired by the fact that in the letter of January 14 it is stated, "We have never received notice from the Interstate Commerce Commission about complaint," although our records contain an acknowledgment by the Belt Line's agent at Washington, D. C., of the receipt of a copy of the complaint under date of December 24, 1920, or 21 days previous.

In reply to the question whether defendant made inquiry of the Belt Line respecting disposition orders, we likewise have a copy of a letter dated January 8, 1921, written by the forwarding agent of defendant to its general freight agent, stating, "We also handled with the Belt Line at the time by phone and they advised that they did not receive any such instructions from consignees at New York, and had they received same they would have returned same, as they do not handle such cases." It is to be noted that this letter was written after the service of the complaint herein in reply to an inquiry addressed to the writer and five months after the arrival of the shipments.

Aside from the question of notice to the Belt Line, complainant contends that in any event the cars had not reached destination and that demurrage charges were, therefore, not properly assessable. The bills of lading, as stated, called for Belt Line delivery to complainant at Norfolk; the cars were held by defendant at Portsmouth and it justifies this action on the ground that it is the practice of the line-haul carriers at this point to hold shipments in their terminal yards awaiting disposition orders and not to deliver to the Belt Line even when so consigned. Complainant's contention finds support in *Elm City Lumber Co. v. S. A. L. Ry. Co.*, 64 I. C. C. 660, in which case the bill of lading called for "A. C. L. delivery" at Petersburg, Va., and where we said:

The rate applicable to the shipments included delivery on the tracks of the Coast Line at Petersburg. In several similar cases we have condemned the assessment of demurrage charges on shipments withheld from the carrier named in the bill of lading as the delivering line.

Furthermore, the tariffs are silent with respect to such detention, and no rule is published requiring payment of the transportation charges prior to delivery to the Belt Line. Shippers are therefore not on notice of any such practice or requirement. In such a case as the one before us the shipper does all that he is required to do when he notifies the delivering line as shown on the billing, in this case the Belt Line, of such disposition of the cars as is desired, and to escape responsibility for failure to effect the delivery called for, the line-haul carrier, the defendant in this proceeding, must clearly



and unequivocally show that the switching line had knowledge of the arrival of the cars and that they were being held for its account. *Iglehart v. Pennsylvania Co.*, Docket No. 5266, unreported; *Schuh-Mason Lumber Co. v. M. & O. R. R. Co.*, 46 I. C. C., 365, 367.

In *Butterfield Co. v. N. O. & N. E. R. R. Co.*, 55 I. C. C., 741, a carload of lumber was consigned to the complainant at St. Louis, Mo., care of Missouri Pacific without intermediate routing. The car arrived at East St. Louis, Ill., via the Mobile & Ohio, and that carrier held it at that point, notifying the Missouri Pacific, after some time had elapsed, of its arrival. The latter line, however, refused to accept the car until all charges had been paid. We said:

The shipment was billed through from point of origin to the Missouri Pacific tracks. The carriers to St. Louis contracted to make the delivery specified in the bill of lading, and the assessment of demurrage charges at a point intermediate to the delivery point was unauthorized and unlawful.

In *Este Co. v. A. C. L. R. R. Co.*, 34 I. C. C., 469, a carload of lumber was shipped from Lamar, S. C., over the Atlantic Coast Line, consigned to Charles Este Company, Portsmouth, Va., "Del. U. S. Navy Yard." The Coast Line does not reach Portsmouth, its rails terminating at Pinners Point, Va., where traffic for delivery at Portsmouth is delivered to the Seaboard Air Line. The agent of the Seaboard at Portsmouth had been furnished an order to deliver the car upon arrival to the general storekeeper of the Norfolk navy yard. The Coast Line held the shipment and refused to deliver the car to the Seaboard until all freight and demurrage charges were paid. Neither the Coast Line tariffs nor those of the Seaboard appear to have provided for the payment of freight charges as a prerequisite to the release of cars to the switching line. We said "The Coast Line contracted to carry the shipment to Portsmouth and may not at will say as to this shipment 'we must be paid before we will surrender to the Seaboard.'" Of similar import are *National Clay Works v. M. & St. L. R. R. Co.*, 38 I. C. C., 353; *Advance Lumber Co. v. A., B. & A. R. R. Co.*, 40 I. C. C., 82; *Alexander Bros. Lumber Co. v. P. M. R. R. Co.*, 47 I. C. C., 69; *Trexler Lumber Co. v. N. O. & N. E. R. R.*, 49 I. C. C., 121; and *Texas Co. v. Director General*, 57 I. C. C., 48.

Defendant relies upon *Ramsey-Wheeler Co. v. Seaboard Air Line*, Docket No. 5693, unreported. In that case a carload of lumber was shipped from Fort McCoy, Fla., to Columbus, Ga., consigned to the complainant and routed "Southern Railway delivery." Complainant had no office at Columbus, and alleged in its complaint that it notified the agent of the Southern at Columbus to deliver the shipment to the Muscogee Lumber Company. The shipment arrived at Columbus over the Seaboard Air Line and was held by

that line for payment of the freight charges before delivering to the Southern, in accordance with a tariff rule so authorizing. The Seaboard promptly notified the complainant of the arrival of the shipments. The complainant made no appearance at the hearing, and upon these facts we held that the demurrage charges accrued through no fault of the defendant and that they were lawfully assessed. Defendant also cites *Heyser Lumber Co. v. K. & W. V. R. R. Co.*, 37 I. C. C., 609. In this case a carload of lumber was shipped from Quicky, W. Va., to Detroit, Mich., consigned to complainant and routed "Transit Ry." The shipment arrived December 28 over the Pere Marquette. The name Transit Railway is sometimes applied to a switching line the correct name of which is Detroit Manufacturers Railroad. Complainant had no office in Detroit, but its address was ascertained and a notice mailed to it January 3. No disposition orders were received, and the Pere Marquette finally ascertained from an intermediate carrier that the shipment was intended for the Yeomans-Diver Company at Detroit and made delivery to that company. Complainant introduced in evidence a carbon copy of a letter addressed to "Agent, Transit Railway Company, Detroit, Mich.," directing delivery to the Yeomans-Diver Company, and also a carbon copy of a letter acknowledging receipt of the carrier's notice of arrival, in which the same delivery was directed. Receipt of these letters was denied by both the Pere Marquette and the Manufacturers Railroad. No one with personal knowledge of complainant's correspondence appearing at the hearing, we held that the evidence did not warrant a presumption that such letters were received by the defendants, and that the demurrage charges which were assessed lawfully accrued.

In neither of these cases did it appear that the shipments moved under a joint rate, nor did the cases turn upon the question of the fulfillment of the contract of carriage as contained in the bill of lading. Furthermore, in the *Ramsey-Wheeler Case* the published tariff provided for the collection of the charges before delivery to the switching line. The letters which were introduced in the instant case to show notice to the Belt Line were supported by evidence of a conversation with the writer, since deceased, and by the fact that certain of the letters were received by the Southern.

On the record before us we find that disposition orders were in the hands of the Belt Line; that inquiry was not made by defendant of the Belt Line respecting disposition orders, nor were the cars delivered to that carrier. We therefore find that the demurrage charges, except as hereinafter shown, were unlawfully collected.

As stated, one car arrived on August 12, and the letter directing disposition of this car is dated August 16, presumably being received

by the Belt Line on August 17. The notice of arrival was mailed on August 13. Therefore, under the published tariff, and inasmuch as no disposition orders were in the hands of the Belt Line, demurrage charges of \$4 properly accrued on this car for August 15 and 16. The record shows that a reconsigning charge of \$5 per car was assessed and collected; but the governing tariff provided that "A single change in the name of the consignee \* \* \* will be allowed without charge if order is received in time to permit instructions to be given yard employees prior to arrival of car at destination \* \* \*." Inasmuch as we hold that the reconsignment or disposition orders were in the hands of the Belt Line prior to the arrival of two of the cars, it necessarily follows that the reconsignment charge on these two cars was unlawfully collected and should be refunded.

We further find that the shipments were made as described and that the unlawful charges were paid and borne by complainant; that the complainant has been damaged in the amount of such charges, and is entitled to reparation from the Seaboard Air Line Railway Company in the sum of \$355, with interest, which amount includes the demurrage and reconsignment overcharges hereinbefore referred to. An order awarding reparation will be entered.

HALL, *Commissioner*, dissenting:

It is the practice of the Seaboard and other lines which reach Norfolk over the Belt from Portsmouth to hold for orders at Portsmouth cars consigned to Norfolk. That practice was followed in this case. We have heretofore found that the Belt is the terminal of the Seaboard and of the other carriers entering Norfolk and Portsmouth, and that the Seaboard and the Belt are in effect one line. The cars were not held short of destination.

It is not shown that either the Seaboard or the Belt received delivery instructions until August 24, when the Seaboard turned the cars over to the Belt. The demurrage had then accrued. Introduction of carbon copies of letters found in complainant's files raises no presumption that the originals were deposited in the mail properly addressed and postage prepaid. Receipt by the Southern of the originals of some of these carbons raises no presumption that the originals of others were received by the Belt. The carbons of the letters to the Belt were improperly addressed. The conversation had with the writer, since deceased, some time after the letters purport to have been written, is hearsay developed on cross-examination of complainant's witness as to the basis of certain assumptions indulged in by him. Upon this record the demurrage and penalty charges collected were not unreasonable or otherwise unlawful.

The complaint should be dismissed.

No. 12263.

AULT &amp; WIBORG COMPANY

v.

DIRECTOR GENERAL, AS AGENT, LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY, ET AL.

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*Submitted August 12, 1921. Decided January 23, 1922.*

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Rates charged on printing paper, in carloads, from Hamilton, Ohio, to Mobile, Ala., for export, found not unreasonable or unduly prejudicial. Refund of overcharge directed. Complaint dismissed.

*F. D. Reiley* for complainant.

*Royal McKenna* and *Fred W. Heid* for Director General, as Agent.

*Herbert S. Harr* for Baltimore & Ohio Railroad Company.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation dealing in printing paper at Cincinnati, Ohio, alleges that the rate charged on 12 carloads of printing paper shipped from Hamilton, Ohio, to Mobile, Ala., for export, between January 28 and February 20, 1920, was unreasonable and unduly prejudicial to the extent that it exceeded 31 cents. The prayer is for reparation only. Rates are stated in cents per 100 pounds.

The shipments moved from Hamilton to Cincinnati over the Baltimore & Ohio. Ten moved thence over the Louisville & Nashville and one over the Cincinnati, New Orleans & Texas Pacific, and Southern. The routing of the other shipment is not definitely shown. The joint fifth-class rate of 39 cents, governed by the official classification, was assessed.

Prior to December 31, 1919, the joint sixth-class rate, governed by the southern classification, of 49 cents, was applicable over the Louisville & Nashville on printing paper, in carloads, both export and domestic. A combination rate of 32 cents was contemporaneously in effect, composed of a local rate of 9 cents from Hamilton to Cincinnati and a proportional rate of 23 cents beyond. This proportional applied over the Southern but not over the Louisville & Nashville. Under exceptions to the official classification, to which both components were subject, printing paper in carloads was rated sixth

class. On December 31, 1919, specific joint export class rates were published from points north of the Ohio River to Mobile over the routes of movement. These rates were governed by the official classification, which rated printing paper fifth class, and were not made subject to the exceptions authorizing the sixth-class rating until February 5, 1920, when the joint sixth-class rate of 32.5 cents became applicable on printing paper for export from Hamilton to Mobile. Accordingly, five of the shipments, which moved after that date, were overcharged.

Complainant relies largely upon the fact that sixth-class rates of 31.5 and 32.5 cents were contemporaneously applicable on printing paper from Hamilton to Norfolk, Va., and New York, N. Y., approximately 700 and 751 miles, respectively. These rates applied on both domestic and export traffic. The short-line distance from Hamilton to Mobile is approximately 810 miles. Not only is the distance to Mobile greater, but the transportation from Hamilton to that port is mainly through territory of lower traffic density than the territory north of the Ohio River and rates are on a higher level. Complainant made some general references to the relative costs of construction and operation in central and southeastern territories, but these were not supported by any statistical or other data.

The fifth-class rate of 39 cents in effect between December 31, 1919, and February 5, 1920, yielded 29.1 cents per car-mile based on the average loading of 60,358 pounds. As evidence that this rate was not unreasonable defendants compare it with many rates on the same commodity from Hamilton and points in Wisconsin and Michigan to southern territory for like and shorter distances. Typical illustrations are rates of 37.5 cents from Hamilton to Memphis, Tenn., 520 miles; 53 cents from Hamilton to Birmingham, Ala., 507 miles; and 79.5 cents from Fox River, Wis., to Montgomery, Ala., 815 miles. The subsequent reduction to 32.5 cents was for the purpose of establishing export rates from Hamilton to Mobile to accord with the combinations applicable in connection with the Southern Railway, which in turn had been made to approximate the rates applicable on export traffic from points north of the Ohio River to New York.

We find that the rate assessed prior to February 5, 1920, was not unreasonable or unduly prejudicial, but that the shipments which moved on and after that date were overcharged 6.5 cents per 100 pounds. Defendants should make prompt refund of the overcharges.

The complaint will be dismissed.

No. 11081.  
 ROUNDUP COAL MINING COMPANY  
*v.*  
 DIRECTOR GENERAL, AS AGENT, BIG FORK & INTER-  
 NATIONAL FALLS RAILWAY COMPANY, ET AL.

Submitted February 16, 1921. Decided January 27, 1922.

Rates on coal, in carloads, from Roundup and Geneva, Mont., to destinations on the Chicago & North Western; Chicago, St. Paul, Minneapolis & Omaha; and Minneapolis & St. Louis railroads in North Dakota and South Dakota found to be unreasonable and unduly prejudicial. Reasonable and nonprejudicial rates prescribed.

*Edgar M. Morsman, jr., Amos Thomas, and H. G. Denison* for complainant.

*J. N. Davis* for defendants.

*D. L. Kelley and Oliver E. Sweet* for Board of Railroad Commissioners of South Dakota; *V. E. Smart, C. F. Dupuis, and Frank Mülhollan* for Board of Railroad Commissioners of North Dakota; *Frank Lyon* for Northwestern Coal Dock Operators Association; *R. W. Ropiequet and F. H. Harwood* for Illinois Coal Traffic Bureau; and *George Heaps* for Iowa Coal Operators Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS *McCHORD, DANIELS, AND ESCH.*

*McCHORD, Chairman:*

Exceptions were filed by defendants to the report proposed by the examiner, and oral argument was had thereon.

The Roundup Coal Mining Company, complainant herein, operates coal mines at or near Roundup and Geneva, Mont., on the Chicago, Milwaukee & St. Paul Railway, hereinafter called the Milwaukee. By complaint, filed December 15, 1919, as amended, it alleges that the joint rates maintained by defendants on coal in carloads from those stations to destinations in North Dakota, South Dakota, and Minnesota on the Chicago & North Western Railway, hereinafter called the North Western; the Chicago, St. Paul, Minneapolis & Omaha Railway; and the Minneapolis & St. Louis Railroad are unjust, unreasonable, and excessive, and subject it to undue prejudice

and disadvantage to the preference and advantage of competitors shipping coal to the same points from Lake Superior ports and from mines in Illinois. The establishment of reasonable and nonprejudicial rates is asked. An allegation of undue prejudice caused by certain rates on lignite coal from mines in North Dakota to stations in South Dakota and Minnesota was withdrawn at the hearing. The Board of Railroad Commissioners of South Dakota and the Board of Railroad Commissioners of North Dakota intervened in support of the complaint as amended. The Illinois Coal Traffic Bureau also intervened in the interest of preserving the relationship between the rates from the Illinois coal fields and the lake ports into this territory. It is not particularly interested in the rates from Roundup. Petitions in intervention were also filed by organizations representing coal producers in other states. Rates herein are stated in amounts per net ton and do not include the increase authorized in *Increased Rates, 1920*, 58 I. C. C., 220.

The main transcontinental line of the Milwaukee extends eastwardly through Roundup and Geneva across the state of South Dakota from Lemmon, on the border of North Dakota, through Mobridge, on the Missouri River, to and through Big Stone City, on the South Dakota-Minnesota state line. Branch lines extend from Linton, N. Dak., to Orient, S. Dak., crossing the main line at Roscoe, 42 miles west of Aberdeen, and from Aberdeen north to Edgeley, N. Dak., and south through Mellette, a junction with the Minneapolis & St. Louis, Redfield, a junction with the North Western to and through Mitchell and Yankton. Another branch extends north from Andover, 29 miles east of Aberdeen, to Harlem, N. Dak., and south to and through Sioux Falls. There are also other branch lines which need not be described. The North Western serves substantially the same general territory. One line extends eastwardly across the state through Rapid City and Pierre, crossing the Milwaukee at Wolsey and Lake Preston; another extends from Blunt, near Pierre, through Gettysburg, Redfield, Elrod, and Watertown; and a third from Oakes, N. Dak., south through Aberdeen to James Valley Junction, paralleling the Milwaukee. The destination territory on the North Western comprises all points reached by that carrier in South Dakota east of the Missouri River. The line of the Chicago, St. Paul, Minneapolis & Omaha, hereinafter called the Omaha, involved in this proceeding, is that running from Sioux Falls to Mitchell. The Minneapolis & St. Louis in South Dakota extends from Revillo, on the eastern border of the state, through Watertown and Melette to Le Beau, with a branch from Conde through Aberdeen to Leola. No complaint is made of the rates from Roundup and Geneva to points

served by the Milwaukee but complainant asks that rates on the same general level be established to points on the North Western east of the Missouri River, on the Minneapolis & St. Louis west of Watertown, and on the Omaha between Mitchell and Sioux Falls.

No bituminous coal is mined in the state of South Dakota and consumers therein are dependent upon external sources for their fuel requirements. The nearest mines are those at Roundup and Geneva on the Milwaukee, Sheridan and Dietz, Wyo., on the Chicago, Burlington & Quincy, hereinafter called the Burlington, and Hudson, Wyo., on the North Western. Apparently little coal moves from the Sheridan or Hudson fields into eastern South Dakota but there is a substantial movement from Roundup and Geneva to points served by the Milwaukee. Owing, however, to the materially higher level of the joint rates from the Roundup district to North Western, Omaha, and Minneapolis & St. Louis points, consumers on those lines obtain their coal from the Lake Superior ports and from Illinois.

The consuming territory on the Milwaukee is divided, roughly, into three rate groups. The first group, to which the rate from Roundup and Geneva, 30 miles east of Roundup, is \$3.30, extends from Lemmon as far east as Aberdeen and includes points on the branches from Linton to Orient and north of Aberdeen to Edgeley. The distance from Roundup to Lemmon is 363 miles and to Aberdeen 560 miles. The next group, to which the rate is \$3.70, includes points east of Aberdeen to and including Big Stone City, the last station in South Dakota, 666 miles from Roundup, and south of Aberdeen as far as Wolsey and Ramona, 634 and 690 miles, respectively, from Roundup. To points south of Wolsey and Ramona, including Madison, Mitchell, Sioux Falls, and Yankton, the rate is \$3.90. The distance from Roundup to Sioux Falls is 742 miles and to Yankton 765 miles. In establishing these rates the Milwaukee used as a basis the rates maintained by the Burlington from the Sheridan district to points on that line in Nebraska, the purpose being to afford the Roundup producer rates to points on the Milwaukee equal for corresponding distances to those from Sheridan to stations in Nebraska and Iowa.

The rates and earnings on bituminous coal from Roundup to a few representative points in South Dakota on the North Western and Minneapolis & St. Louis are compared in the following table, compiled from exhibits filed in the record, with rates from Roundup and Sheridan to points of approximately equal distances on the Milwaukee and Burlington, respectively, and from Benton, Ill., in the southern Illinois coal field.



From—	To—	Location.	Distance.	Rate.	Ton-mile revenue.
			<i>Miles.</i>		<i>Mills.</i>
Roundup, Mont.....	Richmond, S. Dak.....	M. & St. L.....	553	\$4.10	7.22
Do.....	Aberdeen, S. Dak.....	C., M. & St. P.....	590	3.30	5.89
Sheridan, Wyo.....	Litchfield, Nebr.....	C., B. & Q.....	554	3.30	5.93
Benton, Ill.....	Richmond, S. Dak.....		1,006	3.90	3.88
Roundup, Mont.....	Mellette, S. Dak.....	M. & St. L.....	609	4.35	7.14
Do.....	Bristol, S. Dak.....	C., M. & St. P.....	599	3.70	6.18
Sheridan, Wyo.....	Aurora, Nebr.....	C., B. & Q.....	621	3.70	5.90
Benton, Ill.....	Mellette, S. Dak.....		990	3.90	3.94
Roundup, Mont.....	Watertown, S. Dak.....	M. & St. L.....	646	4.55	7.04
Do.....	do.....	C. & N. W.....	673	4.55	6.76
Do.....	Big Stone City, S. Dak.....	C., M. & St. P.....	686	3.70	5.56
Sheridan, Wyo.....	Tamara, Nebr.....	C., B. & Q.....	662	3.70	5.89
Benton, Ill.....	Watertown, S. Dak.....		913	3.55	3.89
Roundup, Mont.....	Cresbard, S. Dak.....	M. & St. L.....	631	4.35	6.89
Do.....	Huron, S. Dak.....	C. & N. W.....	642	4.55	7.09
Do.....	Wolsey, S. Dak.....	C., M. & St. P.....	634	3.70	5.83
Sheridan, Wyo.....	York, Nebr.....	C., B. & Q.....	642	3.70	5.76
Benton, Ill.....	Huron, S. Dak.....		863	3.90	4.62
Roundup, Mont.....	Pierre, S. Dak.....	C. & N. W.....	762	5.15	6.78
Do.....	Yankton, S. Dak.....	C., M. & St. P.....	765	3.90	5.10
Sheridan, Wyo.....	Bellevue, Nebr.....	C., B. & Q.....	761	3.90	5.12
Benton, Ill.....	Pierre, S. Dak.....		984	5.10	5.18

It will be observed that the rates from Roundup to points on the North Western and Minneapolis & St. Louis materially exceed those from southern Illinois to the same points and from Roundup to near-by points on the Milwaukee. Watertown, for example, is an important consuming point in eastern South Dakota. The rate from Roundup to Watertown via Aberdeen and the Minneapolis & St. Louis, the short line, is \$4.55 and the distance is 646 miles. The rate to Elrod, on the Milwaukee, 23 miles from Watertown, is \$3.70. A rate of \$3.55 applies from southern Illinois to Watertown for a movement over 250 miles longer. Complainant and the Board of Railroad Commissioners of South Dakota direct particular attention to the rates to Huron, a point on the North Western, 13 miles east of Wolsey. The following tabulation, taken principally from an exhibit filed by the state commission, shows the rates to Huron from various points or districts actually shipping coal thereto compared with rates for substantially the same distances elsewhere in this territory.

From—	To—	Location.	Average distance.	Rate.	Ton-mile earnings.
			<i>Miles.</i>		<i>Mills.</i>
Roundup, Mont.....	Huron, S. Dak.....	C. & N. W.....	642	\$4.55	7.09
Lake Superior ports.....	do.....	do.....	439	3.15	7.17
Lake Michigan ports.....	do.....	do.....	608	3.15	5.18
Northern Illinois <sup>1</sup> .....	do.....	do.....	658	3.20	4.87
Central Illinois <sup>2</sup> .....	do.....	do.....	856	3.60	4.21
Southern Illinois <sup>3</sup> .....	do.....	do.....	930	3.90	4.19
Roundup, Mont.....	Wolsey, S. Dak.....	C., M. & St. P.....	634	3.70	5.83
Sheridan, Wyo.....	York, Nebr.....	C., B. & Q.....	642	3.70	5.76
Do.....	Stanton, Nebr.....	C. & N. W.....	639	4.05	6.33
Hudson, Wyo.....	Phillips, Nebr.....	do.....	639	3.70	5.79

<sup>1</sup> Bartlett and Peoria, Ill.<sup>2</sup> Assumption, Ill.<sup>3</sup> 11 shipping points.

Complainant contends that the circumstances attending the movement of coal from Roundup to points on the North Western and Minneapolis & St. Louis are not sufficiently dissimilar to those affecting the movement to points on the Milwaukee to justify the defendants in imposing higher charges for the two-line than for the one-line haul. The record shows that the transfers are made under the simplest conditions, in small towns and not at congested terminals. In *Sheridan Chamber of Commerce v. C., B. & Q. R. R. Co.*, 26 I. C. C., 638, we required the establishment of joint rates from Sheridan to destinations on the North Western in Nebraska not in excess of the single-line rates of the North Western from Hudson to the same destination, holding that where the physical connection between carriers is as simple as in these small western towns the slight additional cost of switching should not be made the basis of any additional charge for a two-line haul of substantial length. What was there said applies with equal force here. Moreover, the record shows that rates from the lake ports and from Illinois shipping points to stations in eastern South Dakota are made without regard to the number of carriers that participate in the movement.

The North Western and the Minneapolis & St. Louis oppose a reduction in the joint rates from complainant's mines, largely because a movement of Roundup coal would displace the Illinois and dock coal on which they receive much longer hauls. This contention has been urged and rejected in numerous proceedings, among others *Cardiff Coal Co. v. C., M. & St. P. Ry. Co.*, 13 I. C. C., 460; *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.*, 17 I. C. C., 479; *Rates from Walsenburg Coal Field*, 26 I. C. C., 85, and *Hayden Bros. Coal Corporation v. D. & S. L. R. R. Co.*, 39 I. C. C., 94, and need not be further considered. These defendants also argue that the rates established by the Milwaukee are lower than transportation conditions warrant and therefore not a fair measure of the joint rates under consideration. They undertake to justify the rates from Roundup and Geneva into this territory by comparison with the rates prescribed in *Coal to South Dakota*, 46 I. C. C., 628, and 47 I. C. C., 750, from mines in Wyoming to the same points. However, as pointed out by complainant, the transportation conditions from the two districts are substantially dissimilar. The movement from Sheridan and Hudson to eastern South Dakota is through the Black Hills district in the western part of the state, over grades exceeding 3 per cent, and on branch lines with light traffic density. On the other hand, coal from Roundup and Geneva moves over the main transcontinental line of the Milwaukee for the major portion of the haul, under operating conditions that compare favorably with those from the Wyoming mines into eastern Nebraska.

The record shows clearly that under the existing adjustment of rates complainant is excluded from the consuming territory served by the North Western, Omaha, and Minneapolis & St. Louis, although the transportation service required in reaching that territory from Roundup is materially less than from southern Illinois, which, with the docks, supplies the needs of the consumers. Complainant is entitled to an equal opportunity with its competitors in disposing of its product along the lines of those carriers and may not be denied that opportunity because of a preference on their part for a longer haul and consequently greater revenue from their coal traffic.

We find that for the future the rates assailed will be unreasonable and unduly prejudicial to complainant and its traffic to the extent that they exceed the following, plus the increases authorized in *Increased Rates, 1920, supra*: To stations on the Omaha between Mitchell and Sioux Falls, both inclusive, \$3.90; to all stations on the Minneapolis & St. Louis Railroad in South Dakota between Leola and Watertown, inclusive, \$3.70, grading upward west of Conde at the present rate of progression to a maximum of \$4.05 at Le Beau; to stations on the North Western between Oakes and Wolsey, Redfield and Watertown, Groton and Doland, and Wolsey and Iroquois, including the points named, \$3.70; between Watertown and Sioux Valley Junction, Iroquois and Brookings, and Iroquois and Salem, including the points named, except Iroquois, \$3.90, and to stations on the Gettysburg line of the North Western between Redfield and Pierre and between Wolsey and Pierre the rates should be graded upward to a maximum of \$4.30 at Pierre at the rate of progression observed under the rates now in effect.

The record is silent as to rates to points in Minnesota and they have therefore not been considered.

An appropriate order will be entered.

66 I. C. C.

No. 11097.<sup>1</sup>

GULF STATES STEEL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, LOUISVILLE &amp; NASHVILLE RAILROAD COMPANY, ET AL.

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Submitted June 10, 1921. Decided January 30, 1922.

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Failure of defendants to move inbound and outbound cars between interchange tracks and points within complainants' plants, or to compensate complainants therefor, found not to result in payment by complainants of transportation charges which were or are unreasonable, unjustly discriminatory, or unduly prejudicial. Complaints dismissed.

*William A. Wimbish, Wade H. Ellis, and Richard Jones, jr.,* for complainants.

*John F. Finerty and Royal T. McKenna* for Director General, as Agent; *Nelson W. Proctor* for Louisville & Nashville Railroad Company and Nashville, Chattanooga & St. Louis Railway; *Charles J. Rixey, jr.,* and *H. L. Walker* for Southern Railway system and Mobile & Ohio Railroad Company; and *M. G. Roberts* for St. Louis-San Francisco Railway Company and Birmingham Belt Railroad Company.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

HALL, *Commissioner*:

Exceptions were filed by complainants to the report proposed by the examiner, and argument was had before us.

Complainants are corporations manufacturing pig iron and various iron and steel products at Alabama City, Gadsden, Ironaton, Birmingham, North Birmingham, Sheffield, Florence, Anniston, Shelby, and Thomas, in the state of Alabama, and include in their number practically all of the larger iron and steel manufacturers in the northern part of that state except the Tennessee Coal, Iron & Railroad Company, with plants at Ensley, Bessemer, and Birmingham, and the Woodward Iron Company, which has a plant at Woodward.

By complaints filed December 19, 1919, and April 14, 1920, they allege that defendants' failure to perform, under the line-haul rates,

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<sup>1</sup> This report also embraces No. 11097 (Sub-No. 1), *Republic Iron & Steel Company v. Director General, as Agent, Louisville & Nashville Railroad Company, et al.*

switching between their interchange tracks and points within complainants' plants, or to compensate complainants therefor, has been and is subjecting complainants to the payment of charges for the transportation of inbound and outbound carload traffic to and from their plants which were and are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe reasonable allowances to be received by complainants for performing such switching movements, and to award reparation. Most of the inbound traffic moves under intrastate rates. Except under circumstances not here present our jurisdiction as to such rates, and allowances therefrom, is limited to cases falling within the provisions of section 206 (c) of the transportation act, 1920.

The matter before us is not the measure of the line-haul rates but the character of the movement of inbound and outbound cars between the interchange tracks and points within the plants. Complainants contend that the movement is a part of the transportation service and entitles them to allowances from defendants as provided by section 15 of the act. They have always made the movement at their own convenience and cost, were satisfied to do so without allowance therefor until the rates were increased on June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads, and are willing to forego compensation if the rates in effect June 24, 1918, are restored.

Complainants' plants vary in size and arrangement. All are large and use great quantities of raw materials, principally iron ore, coal, coke, and fluxing stone. Each has standard-gauge tracks, extending from a connection or connections with defendants' lines, and locomotives for moving the cars over these tracks. At or near these points of connection are interchange tracks where empty and loaded cars are received from or delivered to defendants. At some of the plants the traffic is so heavy that separate interchange tracks are needed for inbound and outbound cars.

The practice of defendants in receiving and delivering cars on interchange tracks grew out of the necessities of carrier and plant operation. Each complainant has much intraplant work to perform in the movement of materials from one point to another, and for convenience in doing this work the plants were provided with tracks, rolling stock, and motive power. The length of the plant tracks and the number of cars and locomotives vary. One complainant has plant trackage exceeding in mileage that of the yard tracks of one defendant in the immediate vicinity. The plants when in operation are run continuously, day and night, and this can not be done successfully unless cars are placed at the direction and for the convenience of complainants. The record shows that blast furnaces, for

example, must be fed with iron ore, coke, and fluxing stone continuously and in definite proportions, the proportions varying with the chemical analysis of the different raw materials. It is true that slight interruptions in this supply will not necessarily result in a chilling of the furnace, but the iron produced will not be of the grade required. Some of the furnaces use two grades of ore and some more. No plant could allow defendants to place ore cars on its trestles except as directed by the furnace master.

Most of the complainants use what are called "hot pots," which carry molten slag from the furnace to the slag pile. They are hauled on or across portions of various plant tracks and must have the right of way, as slag can not be allowed to cool in the "hot pot." Some complainants move molten metal in what are called "ladles" over plant tracks between the blast furnaces and the steel mills. These "ladles" also cross or occupy portions of other plant tracks and are given right of way for similar reasons. Complainants' contention that defendants should place all cars for loading or unloading within the plants is coupled with the admission that such placement can not be made by defendants at their own convenience, or otherwise than under the direction and authority of the plant management.

The record is full and specific as to the trackage layouts at these plants, the various degrees of curvature and grade to be overcome, the side and overhead clearances encountered in movements between interchange tracks and spotting points, the practices of complainants in making such movements and the cost thereof. Such movements can be made with certain types of locomotives, and complainants are willing to remodel their tracks in conformity with defendants' requirements as to rails, curves, and roadbed.

It is conceded that prior to June 25, 1918, the line-haul rates did not cover movement of cars by defendants between the interchange tracks and the spotting points. Complainants contend that this was under an agreement that they should make these movements at their own expense because of the low basis of inbound and outbound rates accorded them, and that the successive increases made under general order No. 28 and *Increased Rates, 1920*, 58 I. C. C., 220, have made the rates so high that defendants should render therefor the more extended service sought. This position is untenable.

In support of their contention that the movement between interchange tracks and spotting points is a service of transportation complainants rely upon certain expressions in *Associated Jobbers of Los Angeles v. A., T. & S. F. Ry. Co.*, 18 I. C. C., 310. None of the industries at Los Angeles furnished its own motive power. The industry tracks were not private and could be used by the carriers for

purposes of their own, such as storage of cars, leads to other industries, and for public delivery. The service there refused by the carriers without extra pay was given at 94 other coast terminals. The facts here are essentially different and are more closely analogous to those before us in *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C., 237; *Solvay Process Co. v. D., L. & W. R. R. Co.*, 14 I. C. C., 246; *United States Cast Iron P. & F. Co. v. Director General*, 57 I. C. C., 442; and *Standard Oil Co. v. Director General*, 59 I. C. C., 620. In the case first cited we said:

\* \* \* carriers are under no duty to extend their transportation obligations with the extension of great industrial plants like that of the complainant. They can not be called upon as part of their contract of transportation to make deliveries through a network of interior switching tracks constructed as plant facilities to meet the necessities of the industry. Their obligation as common carriers involves only a delivery and acceptance of carload shipments at some reasonably convenient point of interchange.

In the *Standard Oil Case* last cited the operating conditions and difficulties were similar to those at many of complainants' plants, and we said:

The fact that the several carriers could not perform the service individually is convincing that said service is greater than the equivalent of team-track or simple switching delivery, and, in fact, beyond the scope of the carriers' legal obligation.

Complainants also contend that the right of a shipper to receive an allowance for services rendered in connection with the transportation of property owned by him is not limited by section 15 of the act to those services which the carrier can perform, or can be required to perform, under its contract of transportation. It is well established that, in the absence of undue prejudice, which is not here shown, a carrier can not be required to compensate a shipper for services that it is not the duty of the carrier to perform under its contract of transportation, *Pittsburgh Forge & Iron Co. v. Director General*, 59 I. C. C., 29, or for services which, because of conditions at the shipper's plant, it can not reasonably be required to perform, *Sharon Steel Hoop Co. v. Pennsylvania Co.*, 59 I. C. C., 378.

It is clear from the record that the consistent and uniform practice of defendants has been to deliver and receive the traffic of complainants at the interchange tracks; to do the like in the case of all other industrial plants having locomotives; not to place cars for loading or unloading within the plants, or to make allowances for movement of cars between the interchange tracks and the plants; and not to concur in tariffs which provide for such allowances. Complainants refer to four apparent departures from this invariable practice of defendants. One is that the Southern formerly switched

cars for the Eagle furnace at Attalla, Ala. This furnace had no locomotive and its total traffic was six or seven cars a day. It is now owned by one of complainants and at the time of the hearing was not in operation. Another is the Coosa Pipe & Foundry Company, at Gadsden, which receives only the ordinary placement and owns no locomotive. The other two are small furnaces at Napier and Rockdale, Tenn., which own no locomotives and for which the Louisville & Nashville does the necessary switching, much less in amount than would be required at any of complainants' plants. Defendants have never been requested by complainants to move cars between the interchange tracks and the plants, or, except by the filing of these complaints, to compensate complainants for performing that service.

With respect to the services rendered by defendants under the line-haul rates, it is clear that complainants are not only accorded the same treatment as their competitors in the same district but that defendants do not perform greater services in the delivery and receipt of carload traffic to and from shippers and receivers of other commodities in the district. On the contrary, the evidence tends to show that complainants receive greater services than are accorded to the general public in the placement of cars on team tracks or industry sidings. Defendants do not ordinarily place cars for other industries more than once a day, or at night, or on Sundays, or on legal holidays. For complainants they make numerous deliveries of ore, coal, coke, and fluxing stone every day and night. Defendants also show that the hauls from their break-up yards are longer to the plant interchange tracks than to spotting locations on spur tracks of other industries.

Complainants do not desire and would not accept placement of cars within their plants by defendants at defendants' convenience. It is practically impossible for each defendant serving such a plant to make placements, because each would be obliged to wait upon the convenience of the other defendants, and of the plant management. Complainants are willing to have defendants make these placements only on condition that defendants accept directions from the plant management as to when and how to make them, to suit the convenience of the plants.

Complainants, at their own expense, weigh all inbound and outbound loaded and empty cars and make out all bills of lading. This is done primarily for their own benefit, and it is apparent that they would continue to weigh the cars and insist on the correctness of the weights so obtained even if defendants also weighed the cars.

Upon this record we find that the existing line-haul rates of defendants must be construed as framed to cover delivery and receipt of

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shipments to and from complainants at the interchange tracks; that the transportation services which it is the duty of defendants to perform for complainants under the line-haul rates begin and end at the interchange tracks; that the movements by complainants between the interchange tracks and points within their plants are plant services which it is not the duty of defendants to perform, in the absence of undue prejudice; and that undue prejudice is not shown. We further find that defendants' failure to make such movements between the interchange tracks and points within complainants' plants, or to compensate complainants for making the same, did not and does not result in the payment by complainants of transportation charges which were or are unreasonable, unjustly discriminatory, or unduly prejudicial. The complaints must be dismissed and an order will be entered accordingly.

66 I. C. C.

No. 11543.

SHIBAKAWA & COMPANY, INCORPORATED,  
v.  
PHILADELPHIA & READING RAILWAY COMPANY ET AL.

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*Submitted October 26, 1921. Decided December 30, 1921.*

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Rate charged on pig iron, in carloads, from Pottstown, Pa., to San Francisco, Calif., for export, found not unreasonable or unduly prejudicial. Complaint dismissed.

*Richard Townsend and Gilroy & Townsend* for complainant.  
*Edwin A. Lucas* for defendants.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

By DIVISION 1:

No exceptions were filed to the report proposed by the examiner, but the case was orally argued before us.

Complainant, a corporation engaged in the export and import business, alleges that the rate charged by defendants on 27 carloads of pig iron shipped during May and June, 1917, from Pottstown, Pa., to San Francisco, Calif., for export, was unreasonable and unduly prejudicial. We are asked to award reparation only. Except where otherwise noted, rates will be stated in cents per 100 pounds.

The shipments moved over the defendants' lines and charges were paid at the applicable combination rate of 60.44 cents, composed of a commodity rate of \$4.58 per long ton, or 20.44 cents per 100 pounds, to Chicago, Ill., and an export commodity rate of 40 cents beyond.

When the shipments moved there was in effect from eastern territory, including Pottstown, to San Francisco, a joint export commodity rate of 52.6 cents on certain manufactured iron and steel articles, including billets and bars. This rate was canceled June 25, 1918, by the Director General of Railroads. Effective April 21, 1919, export rates from eastern territory to the Pacific coast on iron and steel articles were restored, the new rate established being 60 cents, and an export rate of 55 cents was at the same time initially established on pig iron from Pottstown. The spread between the export rates on pig iron and manufactured articles thus becoming 5 cents from

Pottstown, complainant contends that a similar spread would have been reasonable when the shipments moved, and asks for reparation upon the basis of a rate of 47.6 cents.

Based on the distance of 3,611 miles over the route by which 21 of the shipments moved, the applicable rate of 60.44 cents yielded earnings of 3.35 mills per net ton-mile, and 13.39 cents per car-mile at the applicable minimum of 80,000 pounds, and 17.47 cents per car-mile on the basis of their average loading of 104,352 pounds. Under the rate claimed, the earnings per net ton-mile via the same route would have been 2.64 mills, and per car-mile 10.55 and 13.76 cents, respectively. The average loading of the other six shipments was not materially less.

In *Suzuki & Co. v. Director General*, 62 I. C. C., 144, we found that a rate of 63.88 cents applicable on certain shipments of pig iron moving between August, 1917, and February, 1918, from Wharton, N. J., to Seattle, Wash., for export, was not unreasonable, unjustly discriminatory, or unduly prejudicial. In that case, as here, complainants had asked for reparation to the basis of 47.6 cents, and the contentions of the parties were not materially different from those now advanced, many of the exhibits being identical in the two cases.

We find that the rate assailed was not unreasonable or unduly prejudicial. An order will be entered dismissing the complaint.

66 I. C. C.

No. 11654.

GRASELLI CHEMICAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO  
RAILROAD COMPANY, ET AL.

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*Submitted August 6, 1921. Decided January 23, 1922.*

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Rate on roasted zinc ore, in carloads, from Canton, Ohio, to Terre Haute, Ind., found not unreasonable or otherwise unlawful. Complaint dismissed.

*M. H. Miller and Ray T. Miller* for complainant.

*Charles R. Webber* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation with desulphurizing plants at Canton, Ohio, and zinc smelters at Terre Haute, Ind., alleges that the rate charged on 33 carloads of roasted zinc ore shipped from Canton to Terre Haute between July 15 and August 20, 1918, inclusive, was unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation only is sought. Rates will be stated in amounts per long ton unless otherwise specified.

Roasted zinc ore is desulphurized zinc ore. The shipments aggregating 2,505,040 pounds, moved over the Baltimore & Ohio and Chicago & Eastern Illinois. Charges were collected at the applicable sixth-class rate of 20 cents per 100 pounds, equivalent to \$4.48 per long ton. Several months prior to the movement complainant had asked for the establishment of a commodity rate. Effective August 24, 1918, a commodity rate of \$2.40 was established. Complainant does not assail the class rate as such, but contends that as applied to these shipments it was unreasonable to the extent that it exceeded the subsequently established rate of \$2.40.

The class rate applicable and the subsequently established commodity rate are compared with contemporaneous commodity rates on roasted zinc ore as follows:

66 I. C. C.

	Distance.	Rate per long ton.	Earnings per net ton-mile.
	<i>Miles.</i>		<i>Mills.</i>
Canton, Ohio, to Terra Haute, Ind., sixth-class rate.....	389	\$4.45	10.3
Canton, Ohio, to Terra Haute, Ind., commodity rate.....	389	2.40	5.5
Grasselli, Ind., to Terra Haute, Ind.....	176	1.10	5.6
Cleveland, Ohio, to Meadowbrook, W. Va.....	262	1.60	5.5
East St. Louis, Ill., to Canton, Ohio.....	633	3.00	4.2
East St. Louis, Ill., to Meadowbrook, W. Va.....	623	3.40	4.9
East St. Louis, Ill., to Burgettstown, Pa.....	640	3.40	4.7

The record does not disclose the junction points via which the shipments moved, but the natural movement would be through Chicago, over 500 miles. The distance of 389 miles shown is over the short line. Based on the latter distance, the rate collected yielded 39 cents per car-mile, and a rate of \$2.40 would have yielded 23.4 cents per car-mile.

Prior to complainant's application for a commodity rate there had been no occasion to ship roasted zinc ore from Canton to Terra Haute, the supply having been drawn from complainant's plant at Grasselli, Ind. It became necessary to obtain a supply from Canton in order to avoid shutting down a portion of the plant at Terre Haute.

The rate of \$2.40 and the rates with which it is compared are much lower than commodity rates on zinc ore found not unreasonable in *Illinois Zinc Co. v. Director General*, 61 I. C. C., 92. We there said, at page 99, with respect to a commodity rate of 22 cents per 100 pounds, effective June 25, 1918, on zinc ore from certain points in the Joplin-Miami district of Missouri-Oklahoma-Kansas, to Peru and La Salle, Ill.:

When all is said, particularly as of the period covered by the complaint, a rate yielding a little over 8.5 mills per ton-mile and 33 cents per car-mile with a load approximating 40 tons, computed on the short-line haul of 514 miles, can not be deemed excessive.

In that case we also found that a contemporaneous rate of 10.5 cents per 100 pounds on zinc ore and roasted zinc ore from the Platteville-Mineral Point district of Wisconsin to Peru and La Salle, over certain routes, was unreasonable to the extent that it exceeded 7.5 cents per 100 pounds. The rate prescribed, for a representative short-line haul of 136 miles, yielded 44 cents per car-mile, based on a lading of 40 tons, and 11 mills per ton-mile.

We find that the rate assailed was not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 11722.

CLARKE-BURKLE &amp; COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted September 6, 1921. Decided January 30, 1922.*

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Rates on corn and oats, in carloads, from Ashland, Lexington, McLean, Rutland, Stanford, and Wenona, Ill., to Memphis, Tenn., found to have been unreasonable. Reparation denied.

*J. B. McGinnis* for complainants.

*A. P. Humburg* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3.

No exceptions were filed to the report proposed by the examiner.

Complainants are dealers in grain and feed at Memphis, Tenn. By complaint filed August 12, 1920, they allege that the rates charged on 2 carloads of corn and 10 carloads of oats shipped from Ashland, Lexington, Clemoor, McLean, Rutland, Stanford, and Wenona, Ill., to Memphis between June 25, 1918, and December 30, 1919, were unreasonable and in violation of section 4 of the interstate commerce act. We are asked to award reparation to the basis of the aggregates of the intermediate rates contemporaneously in effect to and from East St. Louis, Ill. Rates will be stated in cents per 100 pounds.

Our records do not show a station named Clemoor and it appears that the shipment so marked originated at Rutland. The shipments apparently moved over either the Chicago & Alton or the Illinois Central to East St. Louis, and the latter road to Memphis. Charges were collected at the applicable commodity rates of 22.5 cents from Ashland, McLean, and Stanford, and 24 cents from Lexington, Rutland, and Wenona. Defendant contemporaneously maintained over the routes of movement commodity rates of 10 cents from Lexington and 9 cents from Ashland, McLean, Rutland, Stanford, and Wenona to East St. Louis and 10 cents beyond. Defendant admits that the rates charged were unreasonable to the extent that they exceeded the aggregates of the rates to and from East St. Louis, and is willing to make reparation to that basis. On December 31, 1919,

the rates charged were reduced to 16.5 cents and 17.5 cents, respectively, and the fourth section violations removed.

We find that the rates assailed were unreasonable to the extent that they exceeded the aggregates of the intermediate rates contemporaneously in effect to and from East St. Louis.

The record does not show that complainants paid or bore the transportation charges on any of the shipments. Reparation must be denied.

The complaint will be dismissed.

ICC

No. 11749.  
MINUTE TAPIOCA COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, BOSTON & MAINE  
RAILROAD, ET AL.

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*Submitted April 18, 1921. Decided January 31, 1922.*

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Rates on tapioca in packages, in carloads, from Orange, Mass., to Los Angeles and San Francisco, Calif., Portland, Oreg., and Seattle, Wash., found unreasonable. Reparation awarded.

*E. J. Rich and L. A. Norman* for complainant.

*Royal McKenna* for defendants.

*John F. Finerty and Fred W. Heid* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS MEYER, AITCHISON, AND ESCH.

By DIVISION 1:

Exceptions were filed on behalf of defendants to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation engaged in the manufacture and sale of tapioca at Orange, Mass., alleges that the rates on 10 carloads of tapioca from Orange to Pacific coast terminals shipped during the period of April 16, 1918, to September 9, 1919, were unreasonable. We are asked to award reparation. Rates will be stated in amounts per 100 pounds.

Tapioca is a granular dessert preparation made from tapioca flour. As prepared for shipment, complainant's product was put up in cardboard cartons, each of which contained 36 eight-ounce packages.

The shipments moved over the defendant carriers' lines from Orange to Los Angeles, and San Francisco, Calif., Portland, Oreg., and Seattle, Wash. Charges were collected at the applicable fifth-class rates, western classification. Prior to June 25, 1918, the fifth-class rate was \$1.90. On that date it was increased to \$2.375.

For some time prior to March 15, 1918, defendants maintained carload commodity rates on tapioca, tapioca flour, and cassava flour in packages, from eastern points to north and south Pacific coast points, including the points of origin and destination herein, of 90 cents and \$1, respectively. The three commodities mentioned were carried in one item in the tariffs. Effective March 15, 1918, the commodity rates on cassava flour were increased to \$1.35, and the com-

66 I. C. C.



modity rates on tapioca and tapioca flour were canceled, leaving applicable the fifth-class rates. On October 15, 1919, commodity rates of \$1.69 were reestablished on this traffic to both north and south Pacific coast terminals.

Complainant contends that the rates assessed were unreasonable to the extent that they exceeded a rate of \$1.35 prior to June 25, 1918, and \$1.69 subsequent to that date. The former commodity rates had existed for a long time, and complainant contends that there was no justification for their cancellation as evidenced by the fact that they were continued on cassava flour. It compares rates of \$1.69 on macaroni and noodles, and \$1.565 on breakfast cereals, in packages, from and to the points of origin and destination herein, which rates were in effect subsequent to June 25, 1918. Prior to that date the rates cited were \$1.35 and \$1.25, respectively. Complainant also refers to *Du Pont de Nemours & Co. v. P. & R. Ry. Co.*, 56 I. C. C., 231, in which we held that the fifth-class carload rate of \$1.90 on palm flour in bags, between May, 1916, and August, 1917, from Gibbstown, N. J., to American Lake, Wash., was unreasonable to the extent that it exceeded a rate of \$1.35 subsequently established from Atlantic seaboard territory to points in Washington.

Defendants contend that the rates applicable were the normal fifth-class rates; that tapioca moved from Orange to most points throughout the United States at fifth-class rates; that the commodity rates previously maintained to Pacific coast terminals were unreasonably low and were compelled by water competition through the Panama Canal. Complainant's product had been shipped to the Pacific coast by the all-water route. Defendants state that prior to the period in question water competition had decreased, and as there was no longer a compelling reason for the continuance of the lower commodity rates, they were discontinued. They contend that tapioca moved in small volume, and refer to the fact that in this case we are considering only 10 carload shipments during a period of 18 months.

The weights of the shipments exceeded 40,000 pounds, the minimum weight applicable to the former and subsequently established commodity rates.

We find that the rate charged on the shipments moving prior to June 25, 1918, was unreasonable to the extent that it exceeded \$1.35; that the rate charged on the shipments moving subsequent to June 25, 1918, was unreasonable to the extent that it exceeded \$1.69; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$2,862.83, with interest. An order awarding reparation will be entered.

No. 11789.

MITSUI &amp; COMPANY, LIMITED,

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON &amp; QUINCY RAILROAD COMPANY, ET AL.

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Submitted July 21, 1921. Decided January 30, 1922.

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Rate on bar iron and steel, in carloads, from Terre Haute, Ind., to Seattle, Wash., for export, found not unreasonable. Complainant not shown to have been damaged as a result of any undue prejudice that may have existed. Complaint dismissed.

*E. J. Forman* for complainant.

*A. J. Laughon, John F. Finerty, and T. M. Woodward* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation engaged in the exporting and importing business at Seattle, Wash., alleges that the rate of 85 cents charged on 18 carloads of bar iron and steel shipped from Terre Haute, Ind., to Seattle, for export, between July 1 and December 31, 1918, was unreasonable and unduly prejudicial to the extent that it exceeded the export rate of 75 cents contemporaneously maintained from Chicago, Ill. We are asked to require the establishment of the same rate from Terre Haute as from Chicago and grouped points and to award reparation. Rates are stated in amounts per 100 pounds.

The Pittsburgh group rate applied from Terre Haute when the shipments moved. Complainant's principal contentions are that the maintenance of the Pittsburgh rate from Terre Haute, more than 400 miles nearer Seattle, results in undue prejudice to Terre Haute, and that by reason of its location, Terre Haute was and is entitled to the Chicago group rate. In support thereof it relies mainly upon *Inland Steel Co. v. Director General*, 57 I. C. C. 339, wherein we found that the application of the same rate on iron and steel articles, in carloads, from Chicago, Terre Haute, Vincennes, Ind., and Pittsburgh to Pacific coast ports, for export, was unduly prejudicial to

66 I. C. C.

Chicago, Terre Haute, and Vincennes to the extent that the rate from those points exceeded a rate 6.5 cents lower than that contemporaneously maintained from Pittsburgh. The Director General of Railroads was the only defendant and as federal control had terminated no order was issued. In our report upon further hearing, 60 I. C. C., 640, following the filing of a supplemental complaint in which the carriers over whose lines the rates applied were named defendants, we affirmed our previous finding, but because of the general increase in rates authorized on July 29, 1920, the order entered required defendants to establish, on or before June 18, 1921, from Chicago and points taking the same rates, and from Terre Haute and Vincennes to Pacific coast ports, for export, rates not less than 9 cents lower than the rates contemporaneously maintained to the same ports from Pittsburgh.

The distance from Terre Haute to Seattle over the route of movement through Chicago is 2,402 miles as compared with 2,224 miles from Chicago to Seattle. Pittsburgh is approximately 470 miles more distant from the Pacific coast ports than Chicago. The history of the rate adjustment on iron and steel articles from Pittsburgh and Chicago to the Pacific coast ports is given in the *Inland Steel Company Case, supra*. Prior to June 25, 1918, the rate on bar iron and steel from Pittsburgh to Seattle also applied from Terre Haute. On that date, when all export rates were canceled, domestic rates of \$1.125, \$1.19, and \$1.25 became applicable from Chicago, Terre Haute, and Pittsburgh, respectively. Export rates of 85 cents from Terre Haute and Pittsburgh and 75 cents from Chicago became effective July 1, 1918. On April 21, 1919, an export rate of 60 cents was made applicable from Chicago and all producing points east thereof. This was increased to 80 cents on August 26, 1920. Defendants state that the establishment of this enlarged rate blanket was made necessary by increased rail-and-water competition through the Atlantic ports. Effective October 23, 1920, the Chicago rate was reduced to 71 cents but no change was made from Terre Haute and Pittsburgh because of disagreement as to divisions. Effective June 18, 1921, the rate from these points also was reduced to 71 cents.

Defendants contend that the 85-cent rate charged, which yielded ton-mile earnings of 7 mills, was not unreasonable *per se*.

We find that the rate assailed was not and is not unreasonable. Complainant has not shown that it was damaged as a result of any undue prejudice that may have existed. Compliance with our order in the *Inland Steel Company Case, supra*, has placed Terre Haute and Chicago on a rate parity in respect to this traffic.

An order dismissing the complaint will be entered.

No. 11779.

## CITIZENS COAL MINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ILLINOIS CENTRAL  
RAILROAD COMPANY, ET AL.

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*Submitted June 15, 1921. Decided January 23, 1922.*

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Charges on bituminous coal, in carloads, shipped from Citizens mines A and B in the Springfield, Ill., district to intrastate and interstate points during federal control, found not unreasonable. No damage shown from any undue prejudice which may have existed. Complaint dismissed.

*Stanley B. Houck* for complainant.

*Fred W. Heid, A. P. Humburg, and F. H. Towner* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner and the case was orally argued before us.

Complainant, a corporation producing coal at Springfield, Ill., by complaint filed August 12, 1920, assails as unreasonable, unjustly discriminatory, and unduly prejudicial the charges collected on interstate and intrastate shipments of bituminous coal, in carloads, between June 19 and November 21, 1918, and thus during federal control, from Citizens mines A and B in the Springfield district to destinations in Illinois, Indiana, Iowa, and Missouri. We are asked to award reparation and to establish reasonable rates for the future. Rates and charges will be stated in cents per ton of 2,000 pounds.

Citizens mines A and B are on the Chicago, Peoria & St. Louis, hereinafter called the Peoria, 1 and 2 miles, respectively, outside the city limits of Springfield. The shipments moved over the Peoria to junction points in Springfield, 4 and 5 miles from the respective points of origin. The intrastate shipments moved beyond Springfield over the Illinois Central, the Chicago & Alton, hereinafter called the Alton, or the Illinois Traction System, the latter not under federal control. The interstate shipments moved beyond Springfield over the Alton and its connections. Charges were collected at the rate of the Peoria to Springfield, less certain absorptions hereinafter mentioned, plus the Springfield district rates beyond.

66 L. C. C.

Prior to June 25, 1918, a proportional rate of 10 cents applied over the Peoria to Springfield. On that date it was increased to 30 cents. On November 23, 1918, after the shipments moved, the 10-cent rate was restored, limited to apply "only to connecting lines on traffic destined beyond Springfield, Ill." On May 10, 1919, the 10-cent rate was canceled and republished on the same date as a "switching charge." This charge has since been increased to 28 cents.

The rates beyond Springfield are not attacked. They varied according to the destinations of the respective shipments. Under a tariff provision of the Illinois Central covering absorption of "terminal and intermediate line switching charges," \$2.50 per car of the Peoria's charges on shipments over its line were absorbed. This tariff provision did not authorize the absorption of proportional rates and the shipments appear to have been undercharged.

The tariff of the Alton applicable to intrastate shipments provided for the absorption of not to exceed 10 cents per net ton of the "charges" of the Peoria. This absorption apparently was not made on certain intrastate shipments, resulting in overcharges. On interstate shipments the Alton's absorption was limited to "switching" charges. There was no tariff authority for absorption of proportional rates. On some of the interstate shipments the Alton absorbed a part of the Peoria's charges, resulting in undercharges. The Illinois Traction System absorbed \$2 per car on most of the shipments handled by it.

Complainant contends that the 10-cent rate covered a switching service; that it was established to meet the switching rates of the other lines in the Springfield district for similar service; and that it was increased through error. It cites excerpts from circulars issued by the Railroad Administration to the effect that it was not intended to increase switching charges where the switching service was performed in connection with a line haul. The only testimony presented showing the character of the service performed is to the effect that the empty cars are set in and placed and the loads removed by switching engines operating from the classification yards. The applicable tariffs did not define the Springfield switching limits. The controlling fact to be determined is not whether the rate was increased in strict compliance with the terms or the intention of general order No. 28, but whether the resulting rate was unreasonable or otherwise unlawful. *Parlin & Orendorff Co. v. Director General*, 59 I. C. C., 63. Based on the actual loading of the cars, it yielded \$9.09 per car on shipments delivered to the Illinois Traction System; \$11.48 on shipments delivered to the Illinois Central lines; \$13.80 on intrastate shipments; and \$13.52 on interstate shipments delivered to the Alton lines.

It is also contended by complainant that on shipments delivered to the Illinois Central and the Alton all the charges of the Peoria should have been absorbed and that the Illinois Traction System should have absorbed \$2 per car on all shipments. As the latter carrier was not under federal control, its absorption provisions on intrastate traffic were not subject to our jurisdiction.

Complainant's principal contention is that the through charges on its shipments should not have exceeded those from other mines within the Springfield district, which generally took the Springfield rate basis. In *Peerless Coal Co. v. A., T. & S. F. Ry. Co.*, 57 I. C. C., 274, we held that the rates on coal, in carloads, from points on the Springfield Terminal Railway to interstate and intrastate destinations were unduly prejudicial to the extent that they exceeded the rates on like traffic from mines on the tracks of the defendants in that case, within the Springfield group, to the same destinations. Upon further hearing we found, 63 I. C. C., 335, that the rates referred to were not unreasonable and denied reparation. It appears that the Springfield group rates apply from mines on the Cincinnati, Indianapolis & Western and the Chicago & Illinois Midland, not parties to this proceeding. The latter mines are as far from Springfield as are complainant's mines, or farther.

We find that the rates assailed were not unreasonable. The undue prejudice in respect of intrastate traffic, if any exists, is not, under the circumstances here presented, subject to our jurisdiction. There is no basis for a finding that the present interstate rates are unduly prejudicial and complainant has not shown that it was damaged by any undue prejudice which may have existed in the past.

The complaint will be dismissed.

No. 11986.

STANDARD OIL COMPANY (KENTUCKY)

v.

DIRECTOR GENERAL, AS AGENT, ILLINOIS CENTRAL  
RAILROAD COMPANY, ET AL.

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*Submitted July 9, 1921. Decided January 23, 1922.*

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Rates on gasoline and refined oils from North Baton Rouge, La., to Guin and Carbon Hill, Ala., found unreasonable. Reparation awarded.

*A. M. Stephens and Charles Van Overbeke for complainant.*

*John C. Brooke and John F. Finerty for Director General, as Agent.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed on behalf of the Director General of Railroads, as Agent, to the report proposed by the examiner.

Complainant corporation alleges by complaint seasonably filed, as amended, that the class rates on which defendants base a claim for \$8,278.68 undercharges for the transportation of 79 tank-car loads of gasoline and refined oils from North Baton Rouge, La., to Carbon Hill and Guin, Ala., between February 1, 1917, and May 8, 1920, inclusive, and the class rates charged on this traffic from the latter date to August 10, 1920, were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded commodity rates contemporaneously in effect from and to the same points. We are asked to require defendants to relieve complainant from all liability for the undercharges sought to be collected on shipments which moved on and before May 8, 1920, and to award reparation on shipments delivered since that date. Rates will be stated in cents per 100 pounds and do not include the general increases authorized by us on July 29, 1920.

All the shipments were routed by the shipper, except during the period of federal control, when routing was fixed by the Railroad Administration. The routing inserted in the bills of lading was either "Y. & M. V., I. C., St. L. & S. F." or "Y. & M. V., Memphis, St. L. & S. F.," and the movement appears to have been over these

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routes. The Standard Oil Company of Louisiana has a large refinery at North Baton Rouge. During the years 1913 and 1914 complainant erected bulk storage stations at Guin and Carbon Hill, points on the St. Louis & San Francisco, hereinafter called the Frisco, about midway between Memphis, Tenn., and Birmingham, Ala.

The rates applicable over the routes of movement were class rates of 56 cents prior to June 25, 1918, 70 cents from that date to May 19, 1919, and 60.5 cents thereafter. Charges amounting to \$1,727.21 were collected on shipments aggregating 270,383 pounds made between June 8, 1920, and August 10, 1920. Upon two of these a rate of 70 cents was assessed in error, resulting in overcharges. During the period of movement commodity rates of 40 cents prior to June 25, 1918, 50 cents from that date until October 29, 1918, and 44.5 cents thereafter, were in effect from North Baton Rouge and Baton Rouge, La., to Carbon Hill and Guin, reflecting changes under authority of general order No. 28 and freight rate authority No. 96 of the Director General. These rates were clearly restricted so as not to apply over the Yazoo & Mississippi Valley and Illinois Central. The routes over which the commodity rates were applicable were the Louisiana Railway & Navigation Company to New Orleans, La., and certain lines beyond. They are more circuitous than the routes of movement. Prior to October 29, 1918, this restriction appears to have applied only to Guin and not to Carbon Hill, but on that date it was made applicable to both points. Effective October 10, 1920, after the matter had been called to the carriers' attention, this routing restriction was removed.

It was defendants' intention that the commodity rates from and to these points should apply over the Yazoo & Mississippi Valley and Illinois Central, and the routing restriction was the result of error and oversight on the part of the agent publishing the tariff. Commodity rates of 36, 45, and 40.5 cents, reflecting the changes under general order No. 28 and freight rate authority No. 96, applied from the same points to Amory, Miss., a station on the Frisco 87.2 miles west of Guin, which carried the same routing restriction, but commodity rates of 40, 50, and 44.5 cents, reflecting the same changes, also applied to Amory over the Yazoo & Mississippi Valley and Illinois Central.

The lowest combination on Memphis from North Baton Rouge to Guin and Carbon Hill was 40 cents prior to June 25, 1918, composed of local commodity rates of 14 cents to Memphis and 26 cents from Memphis to Guin and Carbon Hill. These rates were increased under general order No. 28 and freight rate authority No. 96. The joint class rates applicable over the routes of movement were in excess of the aggregate of intermediate rates.



We find that the rates on gasoline and refined oil, in tank-car loads, from North Baton Rouge to Guin and Carbon Hill over the Yazoo & Mississippi Valley, the Illinois Central, and the Frisco between February 1, 1917, and October 10, 1920, were unreasonable to the extent that they exceeded 40 cents per 100 pounds prior to June 25, 1918, 50 cents per 100 pounds between June 25, 1918, and October 29, 1918, and 44.5 cents per 100 pounds thereafter; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found reasonable on the shipments which moved prior to June 8, 1920, and at the rates herein found unreasonable on the five shipments to Guin which moved between June 8, 1920, and August 10, 1920, inclusive; that the collection of undercharges on the 79 shipments should be waived by defendants; that complainant has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable, and is entitled to reparation from the Yazoo & Mississippi Valley Railroad Company, Illinois Central Railroad Company, and St. Louis-San Francisco Railway Company in the sum of \$524.01, which includes the amounts overcharged on two shipments, with interest.

An order awarding reparation will be entered.

66 I. C. C.

No. 12116.  
AMERICAN AGRICULTURAL CHEMICAL COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted July 7, 1921. Decided January 23, 1922.*

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Rates on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Greensboro, N. C., and Columbia, S. C., during federal control, found unreasonable. Reparation awarded.

*E. B. Leiby and A. J. Whitman* for complainant.  
*John F. Finerty and John C. Brooke* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant, a corporation with offices in New York, N. Y., and fertilizer factories at various points throughout the southeast, alleges that the rates charged on 38 tank-car loads of sulphuric acid, shipped between December 4 and 31, 1918, inclusive, from Charlotte, N. C., to Greensboro, N. C., and Columbia, S. C., were unjust and unreasonable. Reparation only is sought. Rates will be stated in amounts per ton of 2,000 pounds unless otherwise indicated.

The shipments moved over the Southern, 18 cars, aggregating 882.9 tons, to Greensboro and 20 cars, aggregating 981.25 tons, to Columbia. Total charges of \$8,958.84 were collected at the applicable sixth-class rates of 20 and 28 cents per 100 pounds, equivalent to \$4 and \$5.60 per ton, respectively, the minimum carload weight having been applied on some of the shipments. On January 5, 1919, as the result of an application made by complainant about the time these shipments began to move, commodity rates of \$2.10 to Greensboro and \$2.20 to Columbia, carload minimum 80,000 pounds, were established, based upon the unpublished southern sulphuric-acid scale, so called.

The manufacture of fertilizer in the southeastern states has grown to its present importance largely because an abundant supply of phosphate rock is there available. Sulphuric acid constitutes about 50 per cent, in weight, of the materials used and, during 1918, ap-  
66 I. C. C.

proximately 1,250,000 tons of sulphuric acid were consumed in this manufacture. The rates usually applied are based on the unpublished scale, and for new movements are generally published on that basis upon seasonable application. The origin of this scale is recited in *Du Pont de Nemours Powder Co. v. Director General*, 57 I. C. C., 54, 61. There had been no previous movements between the points here considered. Some have been made since.

Sulphuric acid is a heavy-loading commodity. The average weight of the shipments to Greensboro was 98,100 pounds, and of those to Columbia 98,125 pounds. The tank cars were furnished by the consignor. For the haul of 94 miles from Charlotte to Greensboro, the rate assailed yielded ton-mile earnings of 42.5 mills and car-mile earnings of \$2.08. To Columbia, 107 miles, the ton-mile earnings were 52.3 mills and the car-mile earnings \$2.56. The subsequently established rates would have yielded ton-mile earnings of 22.3 and 20.5 mills and car-mile earnings of \$1.09 and \$1, respectively. The latter earnings would be in line with those under the rate found reasonable on contemporaneous shipments from Charlotte to Greenville, S. C., considered in *Virginia-Carolina Chemical Co. v. Director General*, 61 I. C. C., 473, and compare favorably with those accruing under other rates referred to, some of which apply for joint-line hauls. The subsequently established rates are only slightly lower than the prevailing fertilizer and fertilizer-material rates in this region for like distances, and are higher than some. The last-named products move in ordinary equipment provided by carriers, usually load lighter than acid, and, in many instances, are higher in value.

Defendant contends that reparation should not be awarded because application for the commodity rates was not made in season to permit of their being made effective before this movement, and in support of this contention cites *Midland Refining Co. v. Director General*, 60 I. C. C., 125. The application was made within one week after contracts for purchase of this acid were closed, and shipments began to move at once. Complainant asserts that its previous supply of acid had been largely cut off, and that the limited time available in which to secure a supply from Charlotte did not admit of its making earlier request for publication of the rates sought.

We find that the rates assailed were unreasonable to the extent that they exceeded \$2.10 to Greensboro and \$2.20 to Columbia; that the shipments were made as described; that complainant paid and bore the charges thereon and has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the amount of \$4,946, with interest.

An order awarding reparation will be entered.

No. 12173.

HILB &amp; BAUER

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted July 18, 1921. Decided January 23, 1922.*

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Charges applicable on scrap iron, in carloads, between points within the switching limits of Cincinnati, Ohio, and Andrews, Ky., found unreasonable. Reparation awarded.

*Hilton G. Rardin* for complainants.

*Royal McKenna* and *Fred W. Heid* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are William M. and Gustav H. Hilb, Emanuel Bauer, and Leopold Wolf, copartners dealing in scrap iron and steel at Cincinnati, Ohio, under the trade name of Hilb & Bauer. By complaint filed January 20, 1921, they allege that the charges applicable on 104 carloads of scrap iron, shipped from various points within the Cincinnati switching limits to Andrews, Ky., and on 1 carload shipped from Andrews to complainants' siding in Cincinnati, between June 25, 1918, and January 31, 1919, were unreasonable. We are asked to award reparation.

Andrews is a local point on the Louisville & Nashville, hereinafter termed the L. & N., on the south bank of the Ohio River about 5 miles south of Cincinnati. All of the shipments were made during federal control and the claim for reparation is only against the Director General of Railroads, as Agent, the sole defendant in this proceeding. The shipments to Andrews, aggregating 6,937,330 pounds, originated on the lines of various carriers at different points within the Cincinnati switching limits and moved over one or more of these lines to points of interchange with the L. & N. at the north end of either the latter's bridge or that of the Covington & Cincinnati Elevated Transfer & Bridge Company, termed the C. & C. For these services the switching charges published by the respective carriers were applicable. After such delivery near a north bridge-

head the cars were moved by defendant across one of these bridges to Decoursey or Latonia, Ky., there classified, and moved to Wilders, Ky. The consignee's engine moved the cars from the latter point to its plant at Andrews. The shipment from Andrews, weighing 69,100 pounds, was moved over the lines of the L. & N. and the Cleveland, Cincinnati, Chicago & St. Louis. Neither the total haul nor the part performed by defendant in his operation of the L. & N. is shown in every instance. The record indicates that such part ranged from 11.5 to 20 miles. The applicable charges therefor were on the basis of a rate of 1.5 cents per 100 pounds, minimum and maximum \$15 per car. Some of the shipments originated at complainants' siding in Cincinnati and were undercharged. Excepting these, the charges collected were the sums of the switching charges above mentioned and defendant's charge of \$15 per car. Complainants attack the latter as unreasonable to the extent that it exceeded a minimum of \$6.50 and a maximum of \$10 per car.

For many years prior to June 25, 1918, the charge of the L. & N. for this service was 1.25 cents per 100 pounds, minimum \$5 and maximum \$8 per car. Complainants contend that this movement was a switching service, and that the establishment of a minimum charge of \$15 per car in connection with the rate as increased to 1.5 cents per 100 pounds under general order No. 28 of the Director General of Railroads was a violation of that order, which limited the application of the \$15 minimum to line hauls. On January 31, 1919, the minimum and maximum charges under this rate were reduced to \$6.50 and \$10 per car, respectively, representing an increase of 25 per cent in the charges applicable prior to general order No. 28.

Defendant contends that these shipments were handled under regular billing, in trains subject to orders of train dispatchers, and that the movement performed was a line-haul service which necessitated the crossing of one or more river bridges and considerable switching and back hauling. Andrews is not shown in the governing tariffs as a point within the Cincinnati switching limits, and the rate of 1.5 cents per 100 pounds, minimum and maximum \$15, is published as a transportation charge on carload traffic between Andrews and other points in Kentucky, on the one hand, and Cincinnati, on the other. The service performed by defendant in receiving the cars from the switching lines and delivering them to the consignee, or vice versa, was less than is generally performed in connection with line hauls. No evidence was offered by defendant in support of the inherent reasonableness of the charges attacked. We are of opinion that the service was a line haul.

Based on a lading of 56,000 pounds, the through charges to Andrews from Lockland, Oakley, and Red Bank, Ohio, representative

of the points of origin, yielded car-mile earnings of \$1.257, \$1.348, and \$1.73, respectively. These are compared by complainants with car-mile earnings ranging from 50.1 to 96.3 cents under the combined charges of two carriers other than the L. & N. from the same points to Cleves, Ohio, and Silver Grove, Ky., for greater distances. The hauls to the latter points were entirely within the Cincinnati switching limits, but in some instances a part of the haul was over the rails and bridges used by defendant in transporting the shipments here considered. Comparison is also made with earnings of 46.6 cents per car-mile for a haul of 26.8 miles over the Baltimore & Ohio from Oakley to North Bend, Ohio, both within the Cincinnati switching limits.

We find that the charges applicable on complainants' shipments were unreasonable to the extent that they exceeded those which would have accrued under combinations composed of the applicable switching charges for services other than movement over the lines of the Louisville & Nashville, and a rate of 1.5 cents per 100 pounds, minimum and maximum respectively \$6.50 and \$10 per car; that complainants made the shipments as described and paid and bore the charges thereon; that they have been damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found to have been reasonable; and that they are entitled to reparation, with interest. Complainants should comply with rule V of the Rules of Practice. Authority is granted to waive collection of outstanding undercharges.

66 I. C. C.

No. 11589.

MORRIS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted February 18, 1921. Decided February 8, 1922.*

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Rates on hogs, in carloads, in single-deck cars, from Kansas City, Mo.-Kans., and St. Joseph, Mo., to Oklahoma City, Okla., found to have been and to be unreasonable. Reparation awarded and reasonable rates for the future prescribed.

*Luther M. Walter and John S. Burchmore* for complainant.

*F. E. Andrews, C. S. Burg, A. B. Enoch, and H. W. Davis* for defendants.

*Alexander M. Bull* for Director General of Railroads.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS McCHORD, DANIELS, AND ESCH.

McCHORD, *Chairman*:

The defendants have filed exceptions to the report proposed by the examiner, and the parties have been heard in oral argument.

The complainant is a corporation, engaged in the slaughter of live stock and the sale of the products thereof, with a packing plant at Oklahoma City, Okla. By complaint filed June 28, 1920, it assails the rate of 45.5 cents per 100 pounds, minimum weight 17,000 pounds, charged by the defendants for the transportation of 19 single-deck carloads of hogs shipped August 12 and November 13, 1918, from St. Joseph, Mo., and of 139 single-deck carloads of hogs shipped at various dates between July 30 and December 19, 1918, from Kansas City, Mo.-Kans., all to Oklahoma City. Complainant alleges, among other things, that the rate was unreasonable, in violation of section 1 of the interstate commerce act and of section 10 of the federal control act, to the extent that it exceeded the scale prescribed in *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, increased pursuant to general order No. 28 of the Director General of Railroads, for 343 miles, the short-line distance from Kansas City to Oklahoma City. The prayer is for reparation and for reasonable rates for the future. Rates hereinafter mentioned are per 100 pounds.

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In *Wilson & Co. v. Director General*, 62 I. C. C., 171, in which the complainant in this case intervened, we prescribed, as of the period of the shipments herein, rates of 37 and 40.5 cents for single-line and joint-line hauls, respectively, on single-deck carloads of hogs from Kansas City, Mo.-Kans., to Oklahoma City, subject on and after August 26, 1920, to the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220, and to specified minimum weights graduated to varying car lengths. Complainant herein desired to have the record in that case made part of the record in this, but was unable to furnish a copy thereof for use as an exhibit, and its own exhibits introduced therein were brought down to date and introduced in this record. A careful review of the evidence indicates, as do the briefs on both sides, that no other conclusion than that reached in that case should be reached in this in respect of the same question.

In view of our conclusions herein certain allegations of unjust discrimination and undue prejudice may be disregarded. The question remaining for determination is, whether St. Joseph should be grouped with Kansas City on the same traffic to Oklahoma City, although 37 miles farther distant by the short line. The distance scale which was made the basis of our determination in *Wilson & Co. v. Director General*, *supra*, was likewise used in *Swift & Co. v. Director General*, 62 I. C. C., 166, in prescribing reasonable carload rates on hogs, single-deck and double-deck cars, from several points to North Fort Worth, Tex.; and in the latter case we found that equal rates from South St. Joseph and Kansas City should be maintained. Most of what was said in our report in that case, such as concerns the grouping of the two points, the character of the evidence adduced, the apparently unusual movement, and other matters, is applicable here. All things considered, including the basis upon which the Kansas City-Oklahoma City rates were prescribed, we are of opinion that to the same destination on the traffic in question St. Joseph should continue to take the same rates.

Following *Wilson & Co. v. Director General*, *supra*, and upon all the facts of record, we find that during the period of the shipments the rate assailed was unreasonable to the extent that it exceeded 37 cents for single-line hauls and 40.5 cents for joint-line hauls, minimum weight 17,000 pounds. Reasonable rates and minimum weights for the future from Kansas City to Oklahoma City having been prescribed in the case last above cited, we find that for the future reasonable rates from St. Joseph to Oklahoma City will be those that do not exceed the rates, subject to the minimum weights, contemporaneously in effect from Kansas City to the same destination; and an order to that effect will be entered.



We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged thereby in the amount that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation accordingly, with interest, from the Director General of Railroads, as Agent. The exact amount of reparation due can not be determined upon the record, and complainant should comply with rule V of the Rules of Practice.

DANIELS, *Commissioner*, concurring in part:

I agree that the scale herein proposed will for the future be a reasonable scale for the territory covered, and desirable in the interest of rate uniformity. That, on a sporadic movement, the exaction of a rate increased less than 25 per cent injured and damaged complainant, and entitles it to reparation, is, I think, not established.

66 I. C. C.

No. 11116.

BEAVER SAND COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, BEAVER VALLEY  
RAILROAD COMPANY, ET AL.

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*Submitted November 10, 1920. Decided January 27, 1922.*

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Complainants' prayer for the establishment of through routes and joint rates to and from their plants at Beaver, Pa., in connection with the Beaver Valley Railroad and defendant trunk lines denied, and combination rates in effect to and from complainants' plants found not unreasonable or unduly prejudicial. Complaint dismissed.

*Borders, Walter & Burchmore and William W. Collin, jr., for complainants.*

*C. L. Dickson for Beaver Valley Railroad Company.*

*James Stillwell and Guernsey Orcutt for other defendants.*

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND AITCHISON.

## BY DIVISION 1:

Exceptions were filed by complainants to the report proposed by the examiner.

The complainants, Beaver Sand Company and Cook-Anderson Company, are corporations engaged in the sand business and the builders' supply business, respectively, at Beaver, Pa. Beaver is one of several small towns constituting a continuous industrial district near the confluence of the Beaver and the Ohio rivers, about 25 miles northwest of Pittsburgh, Pa. Beaver is served by two trunk lines, the Pittsburgh & Lake Erie and the Pennsylvania, which will hereinafter be referred to as the defendants. It is also served by the Beaver Valley, approximately 3 miles long, which extends through Beaver and connects with the Pittsburgh & Lake Erie at Bridgewater, Pa., on the east and with the Pennsylvania at Vanport, Pa., on the west. The complainants' plants are served by industrial sidings connected with the Beaver Valley only, the Beaver Sand Company being located about midway between the Beaver Valley's connections with the defendants and the Cook-Anderson

Company being located about 1 mile from the connection with the Pittsburgh & Lake Erie and 2 miles from the connection with the Pennsylvania. The defendants decline to recognize the Beaver Valley as a common carrier or to participate in through routes or joint rates with it, and its charges, amounting to \$3 per car prior to February 27, 1920, and \$4 per car since that date, have always been in addition to the defendants' rates to and from the junction points, which are the same as to and from Beaver.

The complaint, filed December 31, 1919, alleges that the rates to and from complainants' plants are unreasonable and unduly prejudicial to the extent they exceed the rates contemporaneously maintained to and from Beaver by the defendants. We are asked to prescribe through routes and reasonable and nonprejudicial joint rates for the future on interstate traffic and to award reparation.

The Beaver Valley is named as a defendant. It admits practically all the material allegations of the complaint and concedes that complainants are entitled to the relief prayed for but disclaims responsibility for the alleged excessive charges and asks that as to it the prayer for reparation be dismissed.

The defendants take issue with the allegations that the Beaver Valley is a common carrier and therefore it may be well at the outset to examine the facts bearing upon this question. The Beaver Valley was organized in 1899 but did not commence operations until 1904. The builders owned considerable property in and around Beaver and contemplated building a steel plant there which the railroad was to serve, but for various reasons the steel-plant project was never carried out. The Beaver Valley has a capital stock of \$100,000, all of which has been issued and is owned, 897 shares by the estate of J. N. Pew, 100 shares by the estate of A. E. Pew, and 1 share each by three individuals. It has no bonds, but on December 31, 1919, it was indebted to the estate of J. N. Pew in the sum of \$132,279 on which it paid no interest. The Beaver Valley has approximately 3 miles of standard-gauge main track, 0.79 mile of sidings, one small locomotive, and one coal car, all of which it owns. It handles nothing but freight, does not issue bills of lading or assess demurrage charges, employs only one train crew, and operates only eight hours each day. It has five industrial sidings, including two to the Cook-Anderson Company and one to the Beaver Sand Company, and three team tracks which are accessible to and used by the general public. None of the shippers or receivers of freight served by this road has any financial interest in it. It files tariffs and annual reports with and keeps its accounts as required by this Commission. During the calendar year 1918 the Beaver Valley handled 395 cars of freight inbound to industries, 451 cars

outbound from industries, 158 cars inbound and outbound to and from team tracks, and 42 cars from one trunk line to the other, for a revenue of \$3,138; during the calendar year 1919 it handled 306 cars of freight inbound to industries, 401 cars outbound from industries, 102 cars inbound and outbound to and from team tracks, 15 cars from one trunk line to the other, and 15 cars locally between points on its line, for a revenue of \$2,517. The operations of this road have not been successful financially. The last annual report shows that it was operated during the year 1918 at a net loss of \$11,656.47 and that its total deficit at the end of that year was \$119,846.34.

It will be noted that in a few instances cars were switched between the connecting trunk lines by the Beaver Valley. It was explained that this was the result of routing instructions by the shippers; that it could only be accomplished by separate billing and the payment of the local rates to and beyond the Beaver Valley as well as the payment of the charges of that line.

The defendants' contention that the Beaver Valley is not a common carrier appears to be based mainly on its short length, the scarcity of its equipment and the limited extent of its operations. The size of a road does not determine its character. It appears that there is a bona fide holding out by the Beaver Valley to perform a transportation service for the public at rates published and filed in the manner prescribed by law, and that its services and facilities are available to and actually employed by the public; and the conclusion that it is a common carrier seems unescapable.

The complainant sand company referred to a number of points at distances ranging from 5 miles to 22 miles from Beaver at which are located sand plants with which the complainant company is in direct competition, and which are served in most cases by one or the other of the defendants over industrial sidings, switching to and from the plants being performed without charge in addition to the line-haul rates. One plant referred to at New Castle, Pa., is served by the Buffalo, Rochester & Pittsburgh and the switching charges of that road are absorbed by the defendants on traffic on which they have line hauls. Another competing plant at Woodlawn, Pa., is served by the Aliquippa Southern, an industrial line serving a steel plant and connecting with the Pittsburgh & Lake Erie at that point. This road makes a switching charge of 10 cents per ton of which the Pittsburgh & Lake Erie absorbs 4.33 cents on a plant-facility basis, leaving 5.67 cents in addition to the line-haul rate to be paid by the sand company. The reasonableness of this allowance is now at issue before us in another proceeding.

The complainant Cook-Anderson Company named a number of competitors located at various points in the industrial district in

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which Beaver is situated, most of which are connected by sidings with one or the other of the defendants. It appears that generally speaking, each of these roads performs switching for plants which it serves without charge in addition to the line-haul rates and absorbs the switching charges of the other on traffic on which it has a line haul. Interchange between the defendants is made at Beaver Falls, Pa., also a part of the industrial district above referred to, over a short line known as the Beaver Falls Marginal Railroad owned by the Pennsylvania. The complainants also refer to various instances of short common-carrier lines in this territory either independent, owned by one or the other of the defendants, or by industries, with which the defendants participate in joint rates or whose switching charges they absorb wholly or in part.

The defendants insist that there is not sufficient basis for requiring them to participate in joint rates with or to absorb the charges of the Beaver Valley. They contend that Beaver has better transportation service than most towns of its size in that it is reached by two trunk lines; that the service which these lines are prepared to and do render is entirely adequate to the needs of the community as a whole; that there was never any necessity for the construction of the Beaver Valley; and that if the defendants were to participate in joint rates with or absorb the charges of the Beaver Valley, they would be building up a competitor at their own expense, depleting their revenues and creating a dangerous precedent. Complainant Cook-Anderson Company was doing business prior to the construction of the Beaver Valley and drayed its traffic to and from the Pittsburgh & Lake Erie team tracks. The sand company has only been in active operation since the construction of the Beaver Valley, and testified that no sand company could operate successfully if it had to dray its products to a railroad's team track. In this connection defendants call attention to the fact that the industries on other lines which they serve over industrial sidings obtained this service by the execution of contracts under the terms of which the cost of building and maintaining the sidetracks was paid by the industry. If the complainants were willing to bear the expense of building and maintaining sidetracks between their plants and defendants' lines, the defendants would perform complainants' switching without charge in addition to the line-haul rates, but the complainants state that this would be too expensive and call attention to the fact that such sidings if constructed would be a duplication of the existing connection afforded by the Beaver Valley.

The mere fact that one common-carrier railroad has a physical connection with another is not of itself sufficient ground upon which to base an order requiring the establishment of joint rates

over those roads. The question of whether or not the establishment of joint rates should be required is one calling for the exercise of our judgment upon the circumstances and conditions of each particular case. The act to regulate commerce, as amended by the transportation act, 1920, provides that the Commission may and shall establish joint rates "whenever deemed by it to be necessary or desirable in the public interest." In *C. & M. Elec. R. R. Co. v. Illinois Central R. R. Co.*, 13 I. C. C., 20, in discussing a suggestion that the then existing provision of the law with respect to the establishment of through routes and joint rates was mandatory, we said:

We are unable to perceive the force of this suggestion. It proceeds apparently on the theory that the sole object of the provision above quoted was to afford a means by which new lines, with the aid of the Commission, may profitably force their way into shipping districts built up and already well and adequately served by older lines, and thus seize and divide with the latter such traffic as may be offered for movement. If that be the import of the clause in question, it is too well concealed to be readily discernible. \* \* \* While it may not be doubted that a railroad company is competent to file a complaint before us under the clause in question and to demand an order establishing through routes and joint rates with its connections, its right to such relief is to be tested by the needs of the community which it seeks thus to serve, and not by the fact that stations on its line in such communities have not been accorded such routes and rates by connecting lines.

And in *Blakely Southern R. R. Co. v. A. C. L. R. R. Co.*, 26 I. C. C., 344, we said:

It would, however, be most unfortunate if this Commission were to require the promulgation of joint through rates between older and established trunk lines and such small local carriers, irrespective of the necessities from the point of view of the community served and of justice to the trunk lines. It is difficult to see upon what ground this Commission could say that the service which the two trunk lines involved in this proceeding are now furnishing to the towns of Blakely and Jakin is not reasonably adequate.

While the existence of through routes and joint rates in connection with the Beaver Valley and the defendants would undoubtedly be a convenience and result in a financial saving to the complainants, this fact alone does not warrant their establishment. Upon a consideration of the whole record it would appear that from the standpoint of reasonableness the defendants' objections to the establishment of joint rates with the Beaver Valley are well taken and afford a sufficient justification for their position.

The complainants, however, also emphasize the allegation of undue prejudice and contend that the refusal of the defendants to participate in joint rates with, or absorb the charges of, the Beaver Valley while participating in joint rates with or absorbing the switching charges of trunk lines and short common-carrier lines either inde-

pendent, owned by one or the other of the defendants, or by industries, results in undue preference to complainants' competitors located on such lines and corresponding prejudice to the complainants. There was considerable discussion upon the record with reference to the reciprocal character of these absorptions by the trunk lines in certain instances, but it does not appear necessary to go into that question. In the absence of any showing to the contrary it must be presumed that the various roads with which the defendants participate in joint rates or whose charges they absorb constitute proper parts of the facilities for through transportation to and from the communities or territories in which they operate, and that they are entitled to the treatment they receive from the defendants in so far as joint rates or absorption of switching charges are concerned, being distinguishable, in these respects, from the Beaver Valley. The location of industries on such roads places them in a situation different from that of industries served by the Beaver Valley to an extent sufficient to render not undue any preference which they enjoy over complainants by reason of the participation by defendants in joint rates with or the absorption by them of switching charges of the lines on which such industries are located.

The complainants do not attack the separate rates of the Beaver Valley or the rates of the trunk lines to and from Beaver Valley. The sole basis for the complaint is that the Beaver rates should apply to and from complainants' plants, and there is no basis of record for a condemnation of the combination rate.

We find that the charges assailed were not and are not unreasonable or unduly prejudicial, and that the record here presented does not justify the establishment of through routes and joint rates to and from complainants' plants via the Beaver Valley and the defendant trunk lines. The complaint will be dismissed.

66 I. C. C.

No. 11998.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, ET AL.

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*Submitted August 20, 1921. Decided January 30, 1922.*

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Rates on mixed or nitrating acid, in tank-car loads, from Hopatcong and Haskell, N. J., to Arlington, N. J., during federal control, found unreasonable. Reparation awarded.

*Harvey S. Farrow* for complainants.

*Marion B. Pierce* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner. We have reached conclusions differing somewhat from those recommended by him.

Complainant, a corporation manufacturing pyroxylin articles and compounds at Arlington, N. J., by complaint alleges that the fifth-class rates charged on 17 tank-car loads of mixed or nitrating acid, shipped between November 1, 1918, and June 27, 1919, from Hopatcong and Haskell, N. J., to Arlington were unjust and unreasonable. Reparation only is asked. Rates will be stated in cents per 100 pounds.

Fourteen carloads moved from Haskell over the Erie, 23 miles, and three carloads moved from Hopatcong over the Delaware, Lackawanna & Western to Mountain View, N. J., and the Erie beyond, 40 miles. Charges from Haskell were collected at the applicable fifth-class rate of 9 cents, and from Hopatcong at a rate of 17 cents, which was not applicable. The applicable rate was a combination of 18 cents, composed of the fifth-class rates to and beyond Mountain View. The three carloads from Hopatcong were undercharged. Complainant seeks reparation to the basis of 6.5 cents from Haskell and 11.5 cents from Hopatcong, which it contends would have been reasonable rates.

There is a substantial movement of acids, generally at commodity rates less than the classification basis, from northern New Jersey pro-



ducing points to industries within the state, as well as to interstate points. Complainant exhibits the following comparisons of the ton-mile and car-mile earnings yielded by the class rates assailed, the rates sought as the measure of reparation, and commodity rates contemporaneously maintained for hauls of comparable distances in the same territory.

From—	To—	Distance.	Rate.	Ton-mile revenue.	Car-mile revenue. <sup>1</sup>
		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	
Haskell, N. J. ....	Arlington, N. J. ....	23	9	7.82	\$3.658
Do. ....	do. ....	23	18.5	5.65	2.642
Hopatcong, N. J. ....	do. ....	40	18	9	4.207
Do. ....	do. ....	40	11.5	5.75	2.687
Passaic, N. J. ....	Arlington, N. J. ....	22.5	6.5	5.77	2.70
Do. ....	Butler, N. J. ....	23.5	4.5	3.82	1.79
Bayonne (Forty-ninth st.) N. J.	Manville-Pinderne, N. J.	28.5	6.5	4.56	2.132
Camden, N. J. ....	Carney's Point, N. J.	30	6.5	4.33	2.025
Do. ....	Millville, N. J. ....	40	7.5	3.75	1.752
Hopatcong, N. J. ....	Haskell, N. J. ....	33	11.5	6.96	3.257
Do. ....	North Newark, N. J.	49	12	4.89	2.289
Do. ....	Elizabeth, N. J. ....	69	12	3.47	1.625
Brills, N. J. ....	Lake Junction, N. J.	73	10	2.73	1.28

<sup>1</sup> Based on average loading of complainant's shipments, 93,487 pounds.

<sup>2</sup> Rate sought.

<sup>3</sup> Rate of 17 cents applied in error.

During the period of movement a rate of 12 cents applied from Hopatcong to North Newark, N. J., over the Delaware, Lackawanna & Western and Erie by way of Bergen Junction, N. J. Arlington is intermediate over that route and 9 miles less distant, and upon reasonable request therefor this rate, which was published under authority of rule 77 of Tariff Circular 18-A, would have been made applicable to Arlington upon one day's notice.

Complainant cites *Du Pont De Nemours & Co. v. Director General*, 55 I. C. C., 151, in which we found unreasonable the fifth-class rate of 15.5 cents charged subsequent to June 25, 1918, on sulphuric acid, in tank-car loads, for a haul of 80 miles from Perth Amboy, N. J., to Philadelphia, Pa., and awarded reparation to the basis of a rate of 14 cents. The latter would yield earnings of 3.5 cents per ton-mile and \$1.58 per car-mile.

Defendants state that their investigation disclosed no movement of nitrating acid from Haskell to Arlington during the years 1918, 1919, and 1920, except these 14 carloads and contend that the volume of traffic was not sufficient to warrant the application of commodity rates either from Haskell or from Hopatcong.

We find that the rates assailed were unreasonable to the extent that they exceeded rates of 7 cents per 100 pounds from Haskell and 12 cents per 100 pounds from Hopatcong; that complainant made the shipments as described and paid and bore the charges thereon;

that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.



No. 12145. .

FAIRMONT & CLEVELAND COAL COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO  
RAILROAD COMPANY, ET AL.

*Submitted July 15, 1921. Decided January 30, 1922.*

Rates on bituminous coal, in carloads, from Hood mine, South Rivesville, W. Va., to destinations in New York and New Jersey, found not unreasonable. Complaint dismissed.

*E. A. Russell* for complainant.

*Charles R. Webber, W. L. G. Gibson, and Robert K. Neilson* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, mines and markets bituminous coal. It alleges that the charges collected on 15 carloads of bituminous coal shipped from Hood mine, South Rivesville, W. Va., to Cochection, Hancock, and Olean, N. Y., and Garfield, N. J., during January, February, and March, 1919, were and are unjust and unreasonable. We are asked to prescribe reasonable rates and to award reparation.

The shipments moved as routed by complainant over the Baltimore & Ohio to Rivesville Junction, W. Va., approximately 2,100 feet, thence over the routes hereinafter named. No joint rates were in effect over these routes. Originally charges were collected at the joint rates applicable from Rivesville Junction to destination; subsequently additional charges were collected for the movement from the mine to Rivesville Junction, based on a rate of 90 cents per net ton on the shipments which moved prior to February 5, 1919, and a

supposed rate of 60 cents per net ton on those which moved on and after that date. As the 90-cent rate, a distance rate of the Baltimore & Ohio for 10 miles or under, was applicable during the entire period of movement, a number of the shipments were undercharged.

The following table shows the destinations; the routes of movement beyond Rivesville Junction; the aggregate distance from the mine, in miles; the rate factors beyond that point; and the net ton-mile earnings under the aggregate applicable rates, in mills:

Destination.	Route.	Distance from mine.	Rate factor.	Earnings per net ton-mile.
		<i>Miles.</i>		<i>Mills.</i>
Cochecton.....	Monongahela Railway; Pittsburgh & Lake Erie; Erie.	568	<sup>1</sup> \$2.50	6.14
Garfield.....	Monongahela Railway; Pennsylvania Railroad; Erie.	578	<sup>1</sup> 2.75	5.80
Hancock.....	Monongahela Railway; Pennsylvania Railroad; Erie.	656	<sup>1</sup> 3.25	5.79
Hancock.....	Monongahela Railway; Pittsburgh & Lake Erie; Erie.	545	<sup>1</sup> 2.50	6.40
Olean.....	Monongahela Railway; Pittsburgh & Lake Erie; Pennsylvania Railroad.	313	<sup>1</sup> 1.90	3.94

<sup>1</sup> Per net ton.

<sup>1</sup> Per long ton.

Complainant does not assail the factors of the combination rates applicable beyond Rivesville Junction, but urges that the distance rate of the Baltimore & Ohio was and is unreasonable *per se* for the service performed by that carrier. The complaint appears to rest upon the assumptions that the haul from the mine to Rivesville Junction was performed by the Monongahela under a trackage agreement with the Baltimore & Ohio, or that the latter performed only a switching service. These are not supported by the record.

Defendants' witness testified that no shipments, other than those here considered, have moved over these routes; that no request has ever been made for a specific rate from the mine to Rivesville Junction; and that the publication of joint rates was not warranted. No claim is made that future movement is contemplated. The record affords no basis for condemning the rate factor assailed.

We find that the rates assailed were not and are not unreasonable. The complaint will be dismissed.

66 I. C. C.

No. 12161.

STANDARD ASPHALT & REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND MISSOURI  
PACIFIC RAILROAD COMPANY.

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*Submitted August 1, 1921. Decided January 30, 1922.*

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Tank-car load of lubricating oil shipped during federal control from Independence to Eldorado, Kans., found not misrouted. Rate charged found not unreasonable, and no damage shown by reason of the undue prejudice alleged. Complaint dismissed.

*Warren T. Spies* for complainant.

*E. C. Blanchard* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation refining petroleum at Independence, Kans., alleges that the rate charged on a tank-car load of lubricating oil shipped by it October 22, 1919, from Independence to Eldorado, Kans., was unreasonable and unduly prejudicial. Reparation only is sought. Rates will be stated in cents per 100 pounds.

The shipment was routed by complainant "Mo. Pac.-Santa Fe Dely." Complainant also specified in the bill of lading a rate of 29.5 cents. The shipment moved over the Missouri Pacific to Eldorado and was delivered by the Atchison, Topeka & Santa Fe, hereinafter referred to as the Santa Fe. Charges were collected at the applicable commodity rate of 29.5 cents.

Complainant is located on the Missouri Pacific; the consignee on the Santa Fe. Complainant contends that, as no junction point was specified, the shipment should have been delivered by the Missouri Pacific to the Santa Fe at Independence, the point of origin, although the Missouri Pacific reaches Eldorado with its own rails.

The Santa Fe has its own route from Independence to Eldorado and over that route a rate of 14.5 cents was applicable. The contention is without merit. Read in the light of the attendant circumstances I. C. C.

cumstances, the routing instructions plainly indicated a line haul by the originating line, the Missouri Pacific, with delivery by the Santa Fe, and specified the rate, 29.5 cents, which was applicable to that movement, but not to movement over the Santa Fe.

The 14.5-cent rate over the Santa Fe was the so-called higher Missouri River rate which certain lines maintained from refineries in the southeastern section of Kansas to Kansas City, Mo. This rate originally was made somewhat higher than the rate fixed by the Kansas legislature on refined oils, not including lubricating oil, from the same refineries to Kansas destinations in the vicinity of Kansas City. It was applied as a maximum at interior Kansas points, such as Eldorado, only by the Santa Fe.

Lubricating oil is rated fifth class in the governing western classification, and as a general rule moves on the class rates between points in Kansas. Except to points to which the 29.5-cent rate applied and the so-called higher Missouri River rate is published, shipments of lubricating oil from Independence to other points in Kansas move on the class rates. The fifth-class rate from Independence to Eldorado at the time the shipment moved was 39 cents. The evidence does not show that complainant was damaged by reason of the alleged undue prejudice.

We find that the shipment was not misrouted; that the rate assailed was not unreasonable; and that complainant was not damaged by the undue prejudice alleged. The complaint will be dismissed.

66 I. C. C.

No. 12232.<sup>1</sup>  
WEAVER BROTHERS LUMBER COMPANY  
*v.*  
DIRECTOR GENERAL, AS AGENT.

*Submitted July 20, 1921. Decided January 30, 1922.*

Rates on lumber, in carloads, from Preston and Logansport, La., to Eastland and Ranger, Tex., found unreasonable. Reparation awarded.

*L. F. Daspit* for complainants.

*L. M. Hogsett* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants in No. 12232 are T. L. Weaver and S. P. Weaver, co-partners trading under the name of Weaver Brothers Lumber Company. Complainant in Sub-No. 1 is F. E. Nelson, doing business under the name of Nelson-Jacks Lumber Company. By complaints filed February 10 and 28, 1921, respectively, they allege that the rates charged on seven carloads of lumber from Preston, La., to Eastland, Tex., and five carloads of lumber from Logansport, La., to Ranger, Tex., shipped during March, April, and May, 1919, were unreasonable, unduly prejudicial, and in violation of section 4 of the interstate commerce act. Reparation only is asked. Rates will be stated in amounts per 100 pounds.

Logansport and Preston are on the Houston & Shreveport, a subsidiary of the Southern Pacific extending southerly from Shreveport, La., to the Sabine River, where it connects with the Houston East & West Texas, another subsidiary of the Southern Pacific. Eastland and Ranger are on the Texas & Pacific, the former 10 miles west of Ranger.

The seven cars, aggregating 364,680 pounds, upon which complainants in No. 12232 seek reparation, moved from Preston to Eastland over the Houston & Shreveport to Shreveport, thence over the Texas & Pacific to destination. Charges were collected in the

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<sup>1</sup> This report also embraces No. 12232 (Sub-No. 1), Nelson-Jacks Lumber Company *v.* Director General, as Agent.

amount of \$1,422.25 at the applicable joint class-D rate of 39 cents, minimum weight 30,000 pounds.

Of the five shipments aggregating 332,400 pounds from Logansport to Ranger under Sub-No. 1, two moved over the above route and three over the Southern Pacific lines via Nacogdoches and Dallas to Fort Worth, Tex., and the Texas & Pacific beyond. Charges were collected in the sum of \$1,232.70, at rates of 35.5 cents and 38 cents, respectively. The applicable rate from Logansport via either Shreveport or Nacogdoches was the joint class-D rate of 39 cents. These shipments were accordingly undercharged.

The distance from Preston to Eastland, via Shreveport, is about 345 miles; from Logansport to Ranger, via Shreveport, 358 miles, and via Nacogdoches, 406 miles. Effective August 1, 1919, a joint commodity rate of 23.5 cents, minimum weight 30,000 pounds, was published from Preston and Logansport to Eastland and Ranger, applicable via Shreveport only, and it is to this basis that reparation is sought.

During the period of movement a commodity rate of 23.5 cents was in effect to Eastland and Ranger from substantially the greater portion of western Louisiana and from points in eastern Texas. This rate extended as far east as Monroe, Alexandria, and Baton Rouge, La., embracing hauls of 500 miles and over. A joint commodity rate of 23.5 cents on lumber from all Houston & Shreveport stations to destinations on the International & Great Northern, the Texas Midland, the Kansas City, Mexico & Orient, and the Missouri, Kansas & Texas, and a joint commodity rate of 26.5 cents, minimum weight 26,000 pounds, on door and window frames and interior house trimmings between the points here under consideration, applicable generally from points in this territory, were also contemporaneously in effect.

A fourth section departure is alleged in that a rate of 23.5 cents was in effect from Haslam, Tex., a point on the Houston East & West Texas just west of the Louisiana-Texas state line, and about 1 mile from Logansport. This rate did not apply via Shreveport and, so far as this adjustment is concerned, there was no violation of that section. An examination of the tariffs on file with us discloses that there was an available combination from Haslam to Eastland and Ranger via Shreveport of 30 cents, made up of 6 cents to Shreveport plus 18.75 cents beyond, subject to the maximum increase of 5 cents under general order No. 28 and the rule for the disposition of fractions. This constituted a violation of the fourth section which was apparently unprotected.

Defendant's principal defense is that as a rule no joint rates have been maintained between Southern Pacific and Texas & Pacific

points. This is not supported by the tariffs, nor does it justify the maintenance of rates materially higher than the blanket rate contemporaneously in effect between points in this territory for joint-line hauls of the same or greater distances.

We find that the rates applicable were unreasonable to the extent that they exceeded 23.5 cents; that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; that complainants T. L. Weaver and S. P. Weaver are entitled to reparation in the amount of \$565.25, with interest; and that complainant F. E. Nelson is entitled to reparation in the amount of \$451.56, with interest. An order will be entered accordingly.

We are without jurisdiction to award reparation for excess war taxes paid.

66 I. C. C.



No. 12236.

PROVIDENCE FRUIT & PRODUCE EXCHANGE ET AL.

v.

DIRECTOR GENERAL, AS AGENT, SEABOARD AIR LINE  
RAILWAY COMPANY, ET AL.

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*Submitted September 6, 1921. Decided January 30, 1922.*

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Charges collected on cabbage in crates, in carloads, shipped from Coleman, Fla., to Providence, R. I., and rules for arriving at such charges found not unreasonable or otherwise unlawful. Complaint dismissed.

*G. W. Collier* for complainants and intervener.

*Frank W. Gwathmey* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainants to the report proposed by the examiner.

The principal complainant is an organization of dealers in fruit and produce at Providence, R. I. The other complainants and the intervener are such dealers. They allege that the charges collected, based on estimated weights, on three carloads of cabbage, in crates, shipped in February, 1920, from Coleman, Fla., to Providence, were unreasonable to the extent that they exceeded those which would have accrued based on the actual weights. We are asked to award reparation and to prescribe just and reasonable rules for the future.

The cabbage was packed in standard crates and moved in refrigerator cars under ice. Charges were collected at the applicable rate and estimated weight of 120 pounds per crate.

Complainants and intervener do not directly attack either the rule providing for the application of estimated weight or the amount of that weight. The intervener testified that it would work a hardship on some of the growers to require them to furnish actual weights. Their contention, in substance, is that charges should be based upon actual weights where shippers have facilities for weighing.

The cabbage was weighed on standard wagon scales owned by one of the shippers. The average weight per crate in the three cars was

66 I. C. C.

112, 102, and 100 pounds, respectively. Complainants' witnesses testify that a large proportion of the cabbage received at Providence from Florida weighs considerably less than 120 pounds, but no effort was made to prove that cabbage grown in the vicinity of Coleman can not be packed to this weight per standard crate. Defendants contend that many of the crates moving out of Florida during a shipping season weigh more than 120 pounds.

Florida cabbage varies in weight during the season and as a general rule is lightest in January and increases in weight until the end of April. The better the grade and the more careful the packing the more it will weigh per crate. The estimated weight of 120 pounds per standard crate now applicable from all points in Florida was fixed by the carriers after a test in which over 47,000 crates of cabbage were weighed, and in *Stuart & Co. v. A., B. & A. Ry. Co.*, 49 I. C. C., 668, this weight was found not unreasonable. Cabbage moves from the entire Carolina, southeastern, and Mississippi Valley territories on the basis of estimated weights and without any alternative provision in the tariff for the use of actual weights when obtainable. Defendants show that existing rates are predicated on the present estimated weight and urge that any change from this basis would necessitate an upward revision of the rates in order to preserve their revenues.

Defendants' witness testifies that there are no railroad scales for weighing carload freight in Florida except at Jacksonville, and that the delays incident to an attempt to weigh the cars there would result in the missing of markets and sometimes in damage to the shipments. Complainants admit that a delay of 24 hours would in most cases result in damage. Except at Coleman, it is not shown that even wagon scales are available at many of the principal cabbage-shipping points. Much of this traffic originates at nonagency stations having only loading platforms. At agency stations where wagon scales are available, defendants contend that it would be unreasonable and impracticable to require the agent, in connection with his various other duties, to police the weighing of these shipments as they are hauled in and loaded.

The existing rule and practice tend toward a desirable uniformity in the application of rates. *Fruits and Vegetables*, 43 I. C. C., 291, 317. Carriers should not be required to accept weights ascertained by shippers on private scales. *Schenck v. N. & W. Ry. Co.*, 29 I. C. C., 125, 127. Shipment under refrigeration, with constantly varying quantities of ice in the bunkers, renders it impracticable to accurately weigh the contents of the car on track scales. As a rule, cabbage from Florida moves with other perishable freight in through fast

trains operating on fixed schedules. To stop the shipments en route for weighing would result in delay and disarrange the movement. Under such conditions a system of estimated weights is not merely a convenience but a practical necessity. *New Orleans Shippers Asso. v. I. C. R. R. Co.*, 34 I. C. C., 32, 36.

We find that neither the charges assailed nor the present rules for arriving at such charges were or are unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 12240.

PHOENIX REFINING COMPANY ET AL.

v.

ATCHISON, TOPEKA & SANTA FE RAILWAY  
COMPANY ET AL.

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*Submitted August 1, 1921. Decided January 30, 1922.*

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Shipments of secondhand pipe from Howard, Kans., to Anadarko, Okla., found to have been misrouted. Reparation awarded.

*Robinson & Mieher* for complainants.*H. L. McCracken* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

By complaint filed February 12, 1921, as amended at the hearing, the Phoenix Refining Company, a corporation having its principal office at Tulsa, Okla., alleges that the rate charged by defendants on two carloads of secondhand oil-well casing and supplies which moved November 2, 1916, from Howard, Kans., to Anadarko, Okla., was illegal and unreasonable. The prayer is for reparation. An informal complaint for the recovery of damages had been filed with us on October 28, 1919. Rates will be stated in cents per 100 pounds.

The shipments consisted of secondhand pipe and were originally billed to Bowden, Okla., but at West Tulsa, Okla., while en route, were diverted to Anadarko. They apparently moved over the Atchison, Topeka & Santa Fe, hereinafter called defendant, to Tulsa, Okla., St. Louis-San Francisco to Chickasha, Okla., and Chicago, Rock Island & Pacific beyond. They weighed 161,400 pounds and charges of \$1,053.95 were collected at a rate of 65.3 cents. The rate applicable was 77 cents, composed of distance commodity rates of 29 cents to Tulsa, 39 cents Tulsa to Chickasha, and 9 cents beyond. There are outstanding undercharges.

Complainant's representative at Howard had previously shipped a number of cars of oil-well supplies and equipment from that point

to other points, including Bowden. When the pipe constituting these shipments was ready for transportation there were no cars at Howard available for loading. Complainant's representative gave defendant's agent at Howard oral instructions to notify him by telephone or telegraph in the event that cars became available during his absence. He had previously informed the agent that these shipments were to be consigned to Anadarko and it appears that the agent made a memorandum to that effect. Cars were placed and loading completed during the absence of complainant's representative and, without notifying him, defendant's agent billed the cars to Bowden instead of to Anadarko. The bills of lading, showing Bowden as the destination, complainant as consignee, and routing via Tulsa, were accepted and signed by the teamster who loaded the cars. Defendant asserts and complainant denies that the acceptance and signing of the bills of lading by the teamster were binding on complainant.

The teamster was employed by complainant only to load the cars. That he had no authority to accept and sign bills of lading for complainant was made apparent to defendant's agent by former dealings which this agent had with complainant's representative, who, a short time prior to the movement of the cars, had been at Howard and had there directed the movement of other shipments of iron pipe and various oil-well supplies and equipment from that point. So far as appears, this representative had not in any way intimated to defendant's agent that he had delegated to the teamster authority to direct the movement of the two cars. On the contrary, he had requested the agent to notify him when cars were available for loading so that he could return to Howard and attend to the shipment.

No joint rate applied on secondhand iron pipe from Howard to Anadarko, and the lowest combination was 43 cents, composed of commodity rates of 8 cents to Severy, Kans., and 35 cents beyond.

We find that the acceptance and signing of the bills of lading by the teamster did not bind complainant; that defendant misrouted the shipments over the route carrying the higher rate; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rate of 43 cents; and that it is entitled to reparation from defendant, the Atchison, Topeka & Santa Fe Railway Company, in the amount of \$359.93, with interest. Collection of the outstanding undercharges may be waived.

An appropriate order will be entered.

No. 12303.

R. C. WILLIAMS &amp; COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CENTRAL RAILROAD  
COMPANY OF NEW JERSEY, ET AL.

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Submitted August 20, 1921. Decided January 30, 1922.

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Rate applicable on two carloads of canned tomatoes shipped from Greenwich, N. J., to pier 28, New York City, during October, 1918, found not unreasonable, unjustly discriminatory, or unduly prejudicial. Complaint dismissed.

*E. A. Hodgkinson* for complainants.

*Edwin A. Lucas* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, copartners, are retail grocers in New York, N. Y. They allege that the rate charged on two carloads of canned tomatoes shipped from Greenwich, N. J., to pier 28, New York, during October, 1918, was unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to prescribe a reasonable rate for the future and to award reparation. Rates will be stated in cents per 100 pounds.

The shipments aggregated 130,000 pounds, and moved from Greenwich over the Central of New Jersey, hereinafter referred to as the Central, to Bridgeton, N. J., thence over the Pennsylvania to pier 28. Charges were collected at the applicable combination rate of 26 cents, made up of a fifth-class rate of 9 cents from Greenwich to Bridgeton and a commodity rate of 17 cents beyond. A bill for additional charges of \$50.47 on one car was subsequently paid. This was a straight overcharge and should be promptly refunded. Both cars were routed by the shipper to pier 28, one of the Pennsylvania's Manhattan deliveries.

Complainants compare the 26-cent rate with a rate of 17 cents on similar traffic for the single-line haul over the Central. The benefit of the latter rate could have been obtained by specifying Cen-

tral delivery. The Pennsylvania and Central deliveries in Manhattan are within a short distance of each other and complainants could have used the lower rate without inconvenience or disadvantage.

Complainants contend that the 26-cent rate was unreasonable to the extent that it exceeded 18 cents, the rate applicable from Greenwich by way of the Central and Pennsylvania to Wallabout station, a Pennsylvania delivery in Brooklyn.

Defendants' witness testified that pier 28 is the most congested terminal of the Pennsylvania in New York; that its facilities have been and are inadequate; and that various means have been employed to relieve this congestion. Even by working a 24-hour day the Pennsylvania has been unable to handle the traffic tendered it for that delivery. Wallabout station was opened to relieve the pressure on pier 28 with the expectation that part of the traffic could be diverted. This result did not follow, and joint rates were established from certain points on the Central to attract traffic to the Brooklyn terminal. As illustrative of the traffic moving under the 18-cent rate it was testified that in 1920 but one car was received at Wallabout station from Central points.

We find that the rate assailed was not unreasonable, unjustly discriminatory, or unduly prejudicial. The complaint will be dismissed.

66 I. C. C.

No. 12368.  
FLORIDA CITRUS EXCHANGE  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted September 6, 1921. Decided January 30, 1922.*

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Charges collected during federal control on citrus fruit, in field boxes, and on returned empty field boxes, moved intrastate in Florida, found not unreasonable. Complaint dismissed.

*William Hunter* for complainant.

*Henry Thurtell* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, markets citrus fruit for growers in the state of Florida. By complaint filed February 21, 1921, it alleges that the charges collected on 15 carloads of citrus fruit, in field boxes, shipped intrastate in Florida during January, 1919, from groves at Altoona, Orange Bend, Sorrento, and Paola to Tavares for packing and reshipment beyond, and on 11 carloads of empty field boxes shipped during the same month from Tavares to the groves, were unjust and unreasonable. The shipments moved over the Atlantic Coast Line. Reparation only is sought.

Rates on citrus fruit from groves to packing houses in Florida, and on returned empty boxes, are published in cents per field box. The standard field box prescribed by the Florida legislature in June, 1915, is 12 inches wide, 18 inches high, 38 inches long, and contains a middle partition not less than 0.75 inch thick. The field boxes used by complainant were 14 inches wide, 9 inches high, and 25.5 inches long, or over one-half the size of the standard box, and will be hereinafter referred to as half-size boxes. From June 6, 1913, to October 23, 1918, rates on half-size boxes one-half the standard-box rates were maintained over the Coast Line. By tariff effective October 23, 1918, defendant canceled these half rates and provided that the rates shown in the tariff should apply on citrus fruit "in field boxes of dimensions not exceeding those of the standard box."

66 I. C. C.



This conformed with the action taken with respect to similar rates applicable over other lines in Florida.

The rates on half-size boxes were originally established as a temporary arrangement upon representation that a number of shippers had purchased a quantity of these boxes. After the act of the Florida legislature prescribing the dimensions of the standard field box to be used in the sale of citrus fruit was passed in June, 1915, carriers proposed to cancel rates on half-size boxes, but upon representation of complainant and others that immediate discontinuance would work great hardship, as several thousand dollars had been invested in such boxes, agreed to continue these rates for two years. At the end of that period federal control was imminent and the rates over the Coast Line were not canceled until October 23, 1918.

The desirability of a standard-size field box is not disputed. The dimensions prescribed by the Florida legislature are not claimed to be unfair, nor are the rates per standard box alleged to have been unreasonable. The contention that the charges collected were unreasonable rests solely on the fact that the provisions of the tariff effective October 23, 1918, operated to double the charges where the half-size field box was used. The mere fact that complainant was charged more for hauling a like quantity of fruit than were the users of the standard box does not entitle it to reparation. Such a result inevitably follows where rates are stated in amounts per package and the shipper chooses to use a package smaller than the standard prescribed by the tariff. *Mississippi Railroad Commission v. N. O., M. & C. R. R. Co.*, 42 I. C. C., 574.

We find that the charges collected were not unreasonable. The complaint will be dismissed.

66 I. C. C.

No. 12522.

GEORGE M. CHAMPLIN, RECEIVER,

*v.*DIRECTOR GENERAL, AS AGENT, LEHIGH VALLEY  
RAILROAD COMPANY, ET AL.

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*Submitted September 8, 1921. Decided January 30, 1922.*

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Rates on self-rising compound flour, in carloads, from Cortland, N. Y., to points in official territory found not unreasonable or otherwise unlawful. Complaint dismissed.

*D. J. Sims* for complainant.

*Cedric A. Major* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, George M. Champlin, as receiver of the Ekenberg Company, a corporation manufacturing self-rising compound flour at Cortland, N. Y., alleges that the rates charged on that commodity, in carloads, from Cortland to points in Massachusetts, New York, Pennsylvania, New Jersey, Maryland, Virginia, District of Columbia, and other destinations in official territory between January 1, 1917, and May 11, 1919, inclusive, were unjust, unreasonable, unduly prejudicial, and unjustly discriminatory. The prayer is for reparation on shipments made during 1918. The previous rates need not be considered.

The shipments moved over the Lehigh Valley and its connections from 175 to 618 miles. Charges were collected at the applicable fifth-class rates, which ranged from 15 to 26 cents per 100 pounds prior to June 25, 1918, and from 19 to 32.5 cents on and after that date.

The product manufactured by the Ekenberg Company, commercially known as "Teco," is a self-rising compound flour used in making pancakes, griddle cakes, and batter cakes. It consists of wheat flour, corn flour, buttermilk, acid phosphate, soda, and salt, approximately 90 per cent being cereals. It is shipped in cases, each containing 30 one-pound cartons.

At the time of movement defendants maintained in trunk line territory commodity rates less than fifth class on grain products. Com-

plainant contends that the rates charged should not have exceeded these commodity rates, which, on May 12, 1919, became applicable on self-rising compound flour. Defendants also participated in tariffs publishing commodity rates on grain products, applicable on self-rising flour, from central to trunk line and New England territories.

Defendants state that it is natural for central territory to have commodity rates on self-rising flour since it produces grain and grain products so extensively, and that it does not follow that such rates should be extended to points, like Cortland, in territory where these commodities are of lesser traffic importance. They contend that, because of dissimilar conditions, it is common for an article to move on commodity rates in central territory and on class rates in trunk line or New England territory.

On shipments to Massachusetts, New York, and other points of destination shown, the rates paid by complainant's western competitors, while relatively lower, were higher in amounts than those paid by complainant. Complainant was unable to state the extent of the alleged undue prejudice arising from the rates accorded its competitors. It was stated that the main issue is unreasonableness, but little evidence bearing on this issue was introduced. The subsequent reduction of the rates is not in itself sufficient to justify a finding of unreasonableness.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

EE I. C. C.

No. 12546.

ORE CARRYING CORPORATION

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

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*Submitted August 20, 1921. Decided January 30, 1922.*

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Complainant found to be a common carrier subject to the interstate commerce act which may lawfully receive from its trunk-line connections divisions of joint interstate rates, under appropriate tariffs, such divisions to be reasonable.

*Ralph E. Rogers* for complainant.

*A. H. Elder* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in transporting freight by water, alleges by complaint filed March 2, 1921, that it participates in tariffs published by defendant containing joint rates for the continuous carriage of iron ore by water and rail from Port Henry, N. Y., to interstate destinations; and that formerly it received agreed divisions of the joint rates which were fair and reasonable in amount, but that since the increase of 40 per cent in those joint rates, as authorized by us on July 29, 1920, defendant has refused to grant to complainant a corresponding increase in its divisions. The prayer is for a determination of the question whether complainant is a common carrier subject to the interstate commerce act and as such entitled to receive divisions of the joint rates; and, further, that if following such determination complainant is unable to agree with defendant as to the amount of the divisions that a further hearing and investigation be had for the purpose of prescribing just and reasonable divisions. A stipulation of the facts was filed by the parties under rule IX of the Rules of Practice.

Defendant's refusal to grant increased divisions was based on a resolution adopted by the Eastern Freight Traffic Committee which provided that no increases in divisions would be accorded to indus-

trial lines in instances where those lines have not been declared by us to be common carriers.

The Ore Carrying Corporation was incorporated under the transportation corporation law of the state of New York in March, 1917. Its entire capital stock is owned by Witherbee, Sherman & Company, a corporation engaged in mining, producing, and selling iron ore, pig iron, phosphates, and other material.

It transports property by water between points in the state of New York and points in the state of New Jersey and other points, its regular route of transportation being between New York harbor and points on Lake Champlain. The largest part of its traffic is the interstate carriage of iron ore for customers of Witherbee, Sherman & Company. In 1918, 1919, and 1920 miscellaneous cargoes of independent traffic, none of which was for the account of Witherbee, Sherman & Company, were transported entirely by water.

Since June 1, 1917, it has operated under a common arrangement with defendant rail carrier for the continuous carriage of through traffic from Port Henry, N. Y., to points in Pennsylvania, Delaware, and New Jersey. Joint commodity rates on iron ore from Port Henry to destinations in those states have been published since June 1, 1917, in tariffs on file with us. Complainant has been accorded divisions out of those joint rates.

Beginning in 1918 complainant has solicited interstate traffic and has held itself out to the public as ready and willing to undertake the carriage of freight over water-and-rail routes to interstate destinations. Since its organization annual reports in the form prescribed have been filed with us.

We find that the Ore Carrying Corporation is a common carrier of property subject to the interstate commerce act, which may lawfully receive from its trunk line connections divisions of joint interstate rates, under appropriate tariffs, such divisions to be reasonable. If complainant and defendant can not agree upon proper divisions the matter may be brought to us for determination. No order is necessary.

68 I. C. C.

No. 12251.

STANDARD ASPHALT & REFINING COMPANY

v.

DIRECTOR GENERAL, AS AGENT, MISSOURI PACIFIC  
RAILROAD COMPANY, ET AL.

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*Submitted August 22, 1921. Decided January 30, 1922.*

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Shipment of a tank-car load of kerosene from Independence, Kans., to Sheffield, Iowa, reconsigned to Minneapolis, Minn., found to have been overcharged. Refund directed and complaint dismissed.

*Warren T. Spies* for complainant.

*E. C. Blanchard* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation refining petroleum at Independence, Kans., by complaint filed February 14, 1921, as amended, alleges that unreasonable and illegal charges were collected on a tank-car load of kerosene shipped November 8, 1918, from Independence to Sheffield, Iowa, and reconsigned to Minneapolis, Minn. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

The shipment, which weighed 53,156 pounds, was routed by complainant over the Missouri Pacific to Kansas City and the Chicago, Rock Island & Pacific, hereinafter called the Rock Island, beyond. It moved over the Missouri Pacific to Kansas City, and the Rock Island in connection with the Minneapolis & St. Louis, to Sheffield. Upon arrival there complainant reconsigned the car over the Minneapolis & St. Louis to Minneapolis, and the shipment moved from Sheffield over the latter road. Charges of \$279.07, excluding a reconsignment charge of \$5 and a demurrage charge of \$3 accruing at Sheffield and not in issue, were collected, based upon commodity rates of 31 cents to Sheffield and 21.5 cents beyond.

The applicable tariff of the Minneapolis & St. Louis permitted reconsignment at Sheffield at the joint rate in effect from Independence to Minneapolis, plus a charge of \$5. The joint rate applicable over the route of movement from Independence to Minneapolis was 35.5

cents. Defendants admit and we find that the shipment was overcharged in the sum of \$90.37. The overcharge should be refunded to complainant promptly, with interest from April 18, 1919. The complaint will be dismissed.

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No. 11787.

ROTH TOBACCO COMPANY

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted May 28, 1921. Decided January 23, 1922.*

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Combination rates applied on unmanufactured or leaf tobacco in hogsheads, any quantity, and in bulk, in carloads, from certain points in Kentucky, Tennessee, and Indiana to Cape Girardeau, Mo., found unreasonable and unduly prejudicial. Reasonable joint rates prescribed and reparation awarded.

*George B. Webster* for complainant.

*M. G. Roberts* for St. Louis-San Francisco Railway Company; *C. J. Riwey, jr.*, and *W. N. McGehee* for Southern Railway Company and Director General of Railroads, as Agent; *Edward D. Mohr* for Louisville & Nashville Railroad Company, Nashville, Chattanooga & St. Louis Railway, and Director General of Railroads, as Agent; *M. E. Newell* for Tennessee Central Railroad Company; *J. L. Shepard* for Illinois Central Railroad Company; and *John F. Finerty* and *A. P. Humburg* for Illinois Central Railroad Company and Director General of Railroads, as Agent.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner. We have reached conclusions differing somewhat from those recommended by him.

Complainant, a corporation manufacturing tobacco at Cape Girardeau, Mo., alleges by complaint, filed September 4, 1920, that the rates on unmanufactured or leaf tobacco in hogsheads, any quantity, and in bulk, in carloads, from specified points in Tennessee,

63 I. C. C.

Kentucky, and Indiana to Cape Girardeau are unreasonable, unjustly discriminatory, and unduly prejudicial to Cape Girardeau as compared with rates on the same commodity to certain competing points. We are asked to award reparation on shipments moving within two years prior to the filing of the complaint and to prescribe reasonable and nonprejudicial rates for the future. Except as noted, rates will be stated in cents per 100 pounds and are those in effect on August 25, 1920.

The points of origin are Springfield, Gallatin, Hartsville, and Westmoreland, Tenn., and Franklin, Ky., on the Louisville & Nashville; Hopkinsville, Ky., on the Illinois Central; Carthage, Tenn., on the Tennessee Central; Murray, Ky., on the Nashville, Chattanooga & St. Louis; and Booneville, Ind., on the Southern. Complainant also attacked the rates from Paducah, Ky., but later abandoned that allegation. Cape Girardeau is on the Mississippi River, about 131 miles south of St. Louis over the St. Louis-San Francisco, hereinafter called the Frisco, and approximately 54 miles northwest of Cairo, Ill.

Complainant uses low-grade and medium-grade tobacco worth about 17 cents per pound, some 90 per cent of its supply coming from Tennessee, Kentucky, and Indiana. The main distributing territory for its manufactured product is in Missouri, Arkansas, Tennessee, Illinois, Indiana, and Iowa, and its principal competitors are located in Kentucky and at St. Louis. The volume of complainant's business has steadily increased during the past few years, and during 1919 it purchased about 1,250,000 pounds of tobacco at the points mentioned, the usual route from which is through Cairo and over the Mississippi River at Thebes, Ill.

No joint rates applied or apply. Combination rates were assessed as follows: From Gallatin and Springfield 77.5 cents, Westmoreland 86 cents, Carthage 77 cents, Hartsville 80 cents, Franklin 83.5 cents, Hopkinsville 67 cents, Murray 66 cents, and Booneville 60.5 cents. The rates to Cairo from the Louisville & Nashville stations and from Carthage were combinations of local commodity rates to Nashville, Tenn., and a joint commodity rate beyond. From Murray the rate to Cairo was composed of a commodity rate to Paducah, and the fourth-class rate governed by the southern classification beyond. To Cairo from Hopkinsville the sixth-class rate applied as provided in exceptions to the southern classification, and from Booneville the fourth-class rate governed by the official classification. Beyond Cairo the fourth-class any-quantity rate of 32 cents, governed by the western classification, was assessed. Some shipments were made in hogsheads; others loose in bulk. Between 90 and 95 per cent were in car lots. The class and commodity rates applicable on



tobacco, in hogsheads, were any-quantity rates. A minimum of 22,000 pounds applied in connection with commodity rates on tobacco, in bulk, in carloads. The commodity rates were the same on tobacco shipped in either way except that from Carthage to Nashville the rate on tobacco in bulk was 4 cents higher than in hogsheads. The governing classifications provided no specific rating on unmanufactured or leaf tobacco in bulk. The class rates to Cairo assessed on the tobacco shipped in bulk from Hopkinsville and Booneville, and from Paducah on shipments originating at Murray, and from Cairo to Cape Girardeau were therefore not specifically applicable to the commodity as shipped.

A combination commodity rate of 58.5 cents on tobacco in hogsheads, any quantity, was maintained by certain of defendant carriers from Carthage to St. Louis, applicable via Cairo and Cape Girardeau and over the Frisco as a delivering carrier, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. It was stated that this departure came about through inadvertence and would be corrected.

The rates shown in the table below, taken from complainant's exhibits, are illustrative of comparisons between the rates attacked and those to points alleged to be unduly preferred.

To—	From Gallatin.			From Hopkinsville.			From Booneville.			From Murray.		
	Dis- tance.	Rate.	Per ton- mile.	Dis- tance.	Rate.	Per ton- mile.	Dis- tance.	Rate.	Per ton- mile.	Dis- tance.	Rate.	Per ton- mile.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Cape Girardeau, Mo....	253.9	77.5	61	172.9	67	77.4	240.6	60.5	50.2	137.3	66	96.2
St. Louis, Mo.....	333	47.5	28.5	252	37.5	29.7	184	28.5	30.9	215.4	37	34.4
Memphis, Tenn.....	265.9	44	32.6	237	29	24.5	329	31.5	19.1	152.7	52.5	68.6
New Orleans, La.....	581	52.5	16.2	626	41.5	13.2	714	40	11.2	543.8	37.5	13.7
Chicago, Ill.....	452.3	66	29.2	371.3	40	21.5	303.3	33.5	22.1	429.8	44	20.4
Cincinnati, Ohio.....	269	44	32.7	298	35	23.5	215	29.5	27.4	377.3	44	23.3
Philadelphia, Pa.....	938.6	74	14.7	967.6	65	13.4	884.6	53	11.9	1,046.9	65	12.4
Richmond, Va.....	725	69	19	770	58	15	785.8	52	13.2	948.1	62	13

Complainant's case is predicated mainly on the disparity between the rates and ton-mile earnings to Cape Girardeau and those to the points indicated. No evidence was submitted of shipments to the points alleged to be preferred. Attention is directed especially to the fourth-class rate of 32 cents beyond Cairo, which, for the distance of 54 miles over the usual route of movement, yields ton-mile earnings of 11.85 cents, as compared with 41 mills, stated to be the average ton-mile earnings under the rates to Cairo, to which the average distance is about 210 miles. While the total through rates are attacked, complainant particularly assails the factor beyond Cairo.

66 I. C. C.

Complainant suggested several bases of rates, among which are that the through rates to Cape Girardeau should be at least 5 cents lower than to St. Louis from all points except Booneville, from which the St. Louis rate should apply; or that the rate beyond Cairo should be based on the average ton-mile earning under the rates assessed for movement to Cairo plus 2 cents bridge toll at Thebes, which would amount to about 9.5 cents. A bridge toll of 2 cents on fourth class was approved by the Commission for the Memphis crossing in *Memphis-Southwestern Investigation*, 55 I. C. C., 515. Other rates, based upon reductions both to and beyond Cairo, are proposed by complainant, and it is requested on brief that these be established as joint through rates.

The carriers east of Cairo undertook to defend the rates only to that point. The following table is illustrative of comparisons submitted by them of rates and ton-mile earnings from the points named to Cairo and to important tobacco markets:

Haul.	Dis- tance.	Rate.	Ton- mile earn- ings.	Haul.	Dis- tance.	Rate.	Ton- mile earn- ings.
From Springfield to—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	From Hartsville to—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Cairo, Ill. ....	232	45.5	39.2	Cairo, Ill. ....	250	48	38.4
Louisville, Ky. ....	197	34	34.5	Cincinnati, Ohio. ....	288	49	34
St. Louis, Mo. ....	292	47.5	32.5	Evansville, Ind. ....	186	42.5	45.7
From Gallatin to—				From Carthage to—			
Cairo, Ill. ....	229	45.5	39.7	Cairo, Ill. ....	280	45	34.6
Evansville, Ind. ....	166	34	41.2	Memphis, Tenn. ....	306	43	28.1
Lexington, Ky. ....	253	44	34.8	New Orleans, La. ....	662	52.5	15.8
From Franklin to—				From Murray to—			
Cairo, Ill. ....	256	51.5	40.2	Cairo, Ill. ....	83	34	81.9
Henderson, Ky. ....	159	42.5	53.5	Watertown, Tenn. ....	45	20	88.8
Paducah, Ky. ....	209	51.5	49.3	Hinton, Tenn. ....	41	19	92.7
From Westmoreland to—				From Booneville to—			
Cairo, Ill. ....	249	54	43.4	Cairo, Ill. ....	215	28.5	26.5
Louisville, Ky. ....	178	46.5	52.2	St. Louis, Mo. ....	231	28.5	24.6
Cincinnati, Ohio. ....	287	57.5	40				

The rates to Cairo do not compare unfavorably with rates cited from several hundred points in Virginia, North Carolina, and South Carolina to Ohio River points and various tobacco markets in the south for comparable distances. Defendants point out that it is a one-line haul only to the points with which they make comparisons, whereas to Cairo from the points of origin on the Louisville & Nashville the traffic ordinarily moves over three lines, from Booneville over two, and from Carthage over two or three lines. Beyond Cairo it is a three-line haul. In addition to this there are the river crossings at Cairo and Thebes. Complainant contends that the number of lines participating in this traffic is of little consequence and that the service at the points of interchange is inexpensive.

Defendants assert that the rates attacked are in harmony with the usual basis of rates from points in southern territory to points west

of the Mississippi River and to points off the lines of the originating carriers, which are said to be made generally on the lowest combination. It is argued that Cape Girardeau is handicapped by its location with respect to traffic from territory east of the Mississippi River, in that it is not a river crossing or gateway to the territory west, and traffic thereto must pass over a number of lines. The relatively lower rates to Philadelphia, Richmond, and Chicago cited by complainant are stated to be due to the fact that the major part of the hauls to these points is in official territory, where rates are on a lower level.

The burden of justifying the fourth-class rate of 32 cents from Cairo to Cape Girardeau was undertaken by the delivering carrier, the Frisco, but the evidence presented is meager. Its witness stated that the Frisco maintains no commodity rates on unmanufactured tobacco, the fourth-class rates always being applied. The rate of 32 cents is said to be based upon the scale of class rates prescribed in *Memphis-Southwestern Investigation, supra*, which the carriers voluntarily extended from Cairo to southeastern Missouri.

It appears that tobacco in bulk will easily load up to 30,000 pounds in a 36-foot car, but the minimum was fixed at 22,000 pounds because shippers ordinarily do not have on hand large quantities for shipment at one time. At the hearing complainant admitted that this minimum weight was satisfactory, but on brief it requests a minimum of 20,000 pounds. The witness for the Louisville & Nashville stated that this carrier generally maintains the same rates on unmanufactured tobacco in bulk, in carloads, as in hogsheads, any quantity. Complainant asserts that it is more advantageous to ship tobacco in bulk, because by this method of handling it loads heavier, the expense of pressing or packing the tobacco in hogsheads is saved, and the tobacco is subjected to less injury. It is said that tobacco in hogsheads will not load as heavily as in bulk.

As stated, the rates from the nine points of origin under consideration are combinations of separately published local rates, from seven they consist of three factors each, and from two of two factors each. If these local rates were applied to separate movements they would cover from four to six terminal services. The volume of the traffic from these points to Cape Girardeau is considerable and seems to warrant a better rate adjustment than now provided. Subjecting these shipments to a 32-cent rate for the 54 miles beyond Cairo, even when allowance is made for bridge tolls and joint-line hauls, has not been justified. The 34-cent rate charged on the shipments from Murray for the haul of 83 miles to Cairo is excessive, particularly in view of the fact that one of the routes over which a rate of 26.5 cents was contemporaneously applicable from Nashville to Cairo, 224

miles, embraced the route over which the shipments from Murray moved. This departure from the long-and-short-haul provision of the interstate commerce act was properly protected.

We find that the rates assailed were unreasonable and unduly prejudicial prior to August 26, 1920, from Murray, Ky., to Cape Girardeau, Mo., to the extent that the total rate charged exceeded 46.5 cents per 100 pounds; and to Cape Girardeau from the remaining points of origin to the extent that the rates charged exceeded the rates to Cairo, Ill., plus the following amounts, in cents per 100 pounds: from Booneville, Ind., and Carthage, Tenn., 14 cents; from Franklin, Ky., and Westmoreland, Tenn., 15 cents; from Hartsville, Tenn., 16 cents; from Gallatin and Springfield, Tenn., 17 cents; and from Hopkinsville, Ky., 20 cents, minimum 22,000 pounds on shipments in bulk, and any quantity on shipments in hogsheads; and that the rates since August 25, 1920, have been, and the present rates are and for the future will be, unreasonable and unduly prejudicial to the extent that they exceeded or exceed the rates herein found reasonable for the period prior thereto subject to the increase authorized by us on July 29, 1920. Defendants will be required to publish as joint rates the rates found reasonable for the future.

We further find that complainant made the shipments described and paid and bore the charges thereon at the rates herein found unreasonable; that it has been damaged thereby in the amount of the difference between the charges collected and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

An appropriate order for the future will be entered.

66 I. C. C.

No. 11741.

CORINTH GROCERY COMPANY

v.

MOBILE & OHIO RAILROAD COMPANY.

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*Submitted December 15, 1921. Decided February 14, 1922.*

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Class rates from Corinth, Miss., to points in Tennessee between Corinth and Jackson, Tenn., found unreasonable and unduly prejudicial to Corinth and its shippers, as compared with class rates to the same points from Jackson. Reasonable maximum rates prescribed and undue prejudice ordered removed.

*John G. Pankey and B. F. Martin* for complainant.

*Charles J. Rixey and H. L. Walker* for defendant.

*Frank Roberson and B. F. Martin* for Mississippi Railroad Commission; *J. O. Hendley and John E. Benton* for Railroad and Public Utilities Commission of the State of Tennessee; and *A. J. McGehee* for Jackson Association of Commerce, Southern Interior Traffic Association, and Tennessee Manufacturers Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AND DANIELS.

MEYER, Commissioner:

Exceptions were filed by defendant to the report proposed by the examiner, and oral argument was had.

Complainant alleges that the class rates from Corinth, Miss., to points on the Mobile & Ohio Railroad between Corinth and Jackson, Tenn., are unreasonable, and that the rate adjustment from Corinth and Jackson is unduly prejudicial to Corinth, and unduly preferential of Jackson, in violation of sections 1 and 3 of the interstate commerce act. We are asked to prescribe maximum reasonable and non-prejudicial rates for the future. The Mississippi Railroad Commission, the Railroad and Public Utilities Commission of the State of Tennessee, the Jackson Association of Commerce, and other organizations representing certain commercial interests, with headquarters at Jackson and Nashville, Tenn., who intervened in support of the complaint, will also be included herein in the general designation of

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complainants. Rates will be stated in cents per 100 pounds, and, unless otherwise indicated, will include the general increase of 1920.

The railroad commissions of Tennessee and Mississippi, recognizing the close relationship between interstate and intrastate rates and the discrimination which results from different levels of rates on interstate and intrastate traffic, have been active in cooperating with us with a view to bringing about a harmonious adjustment of rates between points in these states.

Discussion of the issue of undue prejudice is unnecessary. It is conceded by all parties to the record that the present adjustment of rates from Corinth and Jackson to intermediate points is unduly prejudicial to the former, and this admission is amply justified by the evidence of record. The parties, however, are not in agreement as to the proper method of correcting this situation. Defendant contends that its rates from Jackson are unreasonably low and should be increased to the level of those applying from Corinth, while complainants maintain that the latter rates are unreasonably high and should be reduced.

Corinth is the first station on defendant's main line south of the Mississippi-Tennessee state line. It is also served by the Memphis division of the Southern and the Chicago-Birmingham line of the Illinois Central which is operated over defendant's tracks between Jackson and Corinth, slightly more than 57 miles. The population of the city is 5,020, and there are located there three wholesale grocery establishments, including complainant; also produce establishments, machine shops, lumber dealers, brick manufacturers, two soft-drink bottling plants, and a clothing dealer, all of whom are said to ship goods to points on defendant's line between Corinth and Jackson.

The rates applying from Jackson are the Tennessee intrastate rates, established as a result of the order of the Railroad and Public Utilities Commission of Tennessee, August 12, 1907, which order is said to be no longer operative, twice increased 25 per cent. Those from Corinth are defendant's interstate distance rates applicable south of Cairo, Ill., somewhat revised in connection with the adjustment resulting from *Fourth Section Violations in the Southeast*, 30 I. C. C., 153, and 32 I. C. C., 61, plus two separate increases of 25 per cent. In the case cited we fixed a scale of class rates for distances of 300 miles and over, which the carriers were authorized to use as maxima at intermediate points in connection with many specific rates. This scale fixed a first-class rate of 96 cents for a distance of 300 miles. In the revision of defendant's rates this figure was adopted as a first-class rate for 300 miles and 25 cents

as a first class rate for 5 miles, and the rates for intermediate distances were graded out.

Defendant's interstate scale starts with a first-class rate of 39.5 cents for 5 miles, increases 4, 4.5, or 5 cents for each additional 5 miles, resulting in a rate of 83 cents for the 55-mile group, which is also the rate for 60 miles, the maximum distance to be considered herein. The Tennessee intrastate scale starts with 31.5 cents first-class for 5 miles, which is also the rate for 10 miles, and is 62.5 cents for the 60-mile block.

The state commissions of Mississippi and Tennessee each have submitted proposed scales which are claimed to be reasonable for adoption between these points. They are not far apart in level, and both are constructed in conformity with the class relationship approved in *Rates to and from Nashville*, 61 I. C. C., 308, 336, and in *Rates to, from, and between Points South of Ohio River*, 64 I. C. C., 107, 134, viz:

Classes .....	1	2	3	4	5	6	A	B	C	D
Percentages.....	100	86	76	64	52	43	29	35	27	24

The scale proposed by the Tennessee commission starts with a first-class rate of 31 cents and progresses regularly at the rate of 3 cents for each 5 miles, resulting in a rate of 64 cents for 60 miles, and the first-class rates differ little in level from the present intrastate rates applicable on defendant's line in Tennessee. The scale suggested by the Mississippi commission begins with a first-class rate of 36 cents for 5 miles, which is also the rate for 10 miles, progresses at the rate of 3 cents for each 5 miles up to 30 miles, and 2 cents or 3 cents for each additional 5 miles, resulting in a rate of 62 cents for 60 miles. These rates are materially lower than the present intrastate rates applicable on defendant's line in Mississippi; but all intrastate rates are now under consideration by the Mississippi commission with a view to their realignment, and, furthermore, these rates are governed by the Mississippi classification, the ratings in which are lower than those in the southern classification in many instances.

The following table, compiled from exhibits of record, taking the 5, 10, 30, 50, and 60 mile blocks as representative, compares the existing rates with those proposed:

Distance.	Classes.									
	1	2	3	4	5	6	A	B	C	D
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
5.....	<sup>1</sup> 39.5	34.5	30.5	25	22	17.5	17.5	24	14.5	11.5
	<sup>2</sup> 31.5	27	24	20	16.5	14	11.5	12.5	9.5	9.5
	<sup>3</sup> 31	26	24	20	16	13	9	12	8	7
	<sup>4</sup> 36	31	27	23	19	15.5	10.5	12.5	10	9
	<sup>1</sup> 44	37.5	34.5	28	24	20.5	20.5	25	15.5	12.5
10.....	<sup>2</sup> 31.5	27	24	20	16.5	14	11.5	12.5	11.5	11.5
	<sup>3</sup> 34	29	26	22	18	15	10	12	9	8
	<sup>4</sup> 36	31	27	23	19	15.5	10.5	12.5	10	9
	<sup>1</sup> 62.5	55	49	40.5	34.5	28	28	34.5	25	20.5
	<sup>2</sup> 47	40.5	33	30	25	22	19	19	19	19
30.....	<sup>3</sup> 46	40	35	29	24	20	13	16	12	11
	<sup>4</sup> 48	41	36.5	30.5	25	20.5	14	17	13	11.5
	<sup>1</sup> 80	69	61.5	52	44	36.5	36.5	40.5	31.5	25
	<sup>2</sup> 58	50	42.5	36.5	31.5	28	25	25	20.5	20.5
	<sup>3</sup> 58	50	44	37	30	25	17	20	16	14
50.....	<sup>4</sup> 57	49	43	36.5	30	24.5	16.5	20	15.5	14
	<sup>1</sup> 83	72	64.5	53	45.5	37.5	37.5	42.5	31.5	25
	<sup>2</sup> 62.5	55	47	39.5	34.5	31.5	28	28	22	22
	<sup>3</sup> 64	55	44	41	33	28	19	22	17	15
	<sup>4</sup> 62	53	47	40	32	26.5	18	22	17	15

<sup>1</sup> Mobile & Ohio, interstate.

<sup>2</sup> Tennessee, intrastate.

<sup>3</sup> Proposed by Tennessee commission.

<sup>4</sup> Proposed by Mississippi commission.

From the foregoing it will be observed that adoption of either of the proposals would result in marked decreases in the rates from Corinth, and this reduction would be quite substantial as to classes 3, 4, 5, B, C, and D, which are said to move most of the traffic. On the lettered classes, the rates proposed are lower than the present intrastate rates in Tennessee.

Complainants compare defendant's scale with 53 scales, both interstate and intrastate, applying in the south and southeast, and it is pointed out that the Southern publishes rates applicable on interstate traffic from Corinth to points on its line which are materially lower than those of defendant. Many of the scales cited are for intrastate application, and some seem conspicuously low. In general they are lower than the defendant's interstate rates. The rates on the lettered classes in particular, however, are generally higher than those in the scales proposed by the state commissions. Complainants also compare the rates from Corinth with specific rates between certain points in this territory, which are generally considerably lower than the defendant's interstate rates; among others are first-class rates of 66 cents from Paducah, Ky., to Whitlock, Tenn., 58 miles, and 69 cents from Cairo to Union City, Tenn., 55 miles.

Defendant admits that its rates are higher class for class than the Shreveport and Memphis-Southwestern scales, but contends that this



is justified, among other things, by the fact that the ratings in western classification, which govern the former scales, are in many instances much higher than in southern classification, which governs the latter. Illustrative of this defendant introduced an exhibit showing that, of 610 carloads of merchandise shipped from Mississippi jobbing points, approximately one-half of which were classified C and D, all would have been classified 1, 2, 3, or 4 under western classification. Defendant also in this connection shows that the average of its rates for classes 1 to D compares favorably with the average of classes 1 to 4 of the Shreveport and Memphis-Southwestern scales. Such statements unaccompanied by more detailed information as to the commodities included and the conditions of transportation are not, however, convincing that this is fairly representative of the movement in the two territories.

Defendant compares its interstate rates with the interstate mileage scale of 10 other carriers operating in the Mississippi Valley, viz, the Gulf & Ship Island, Gulf, Mobile & Northern, Mississippi Central, Illinois Central, Nashville, Chattanooga & St. Louis, New Orleans & Northeastern, New Orleans Great Northern, St. Louis-San Francisco, Southern (west), and the Yazoo & Mississippi Valley. In some instances defendant's rates are lower and in others higher than those cited. But it is worthy of notice that the exhibit discloses that the rates of the Nashville, Chattanooga & St. Louis, which also operates in Tennessee, are much lower than those of the defendant; and the pronounced weakness of some of the carriers mentioned renders their rates scarcely comparable with defendant's. It should also be noted that in many instances specific rates are in effect which are lower than those under the distance scales.

Defendant's line extends through Mississippi to Mobile, Ala. It also has a line from Artesia, Miss., to Montgomery, Ala. In *Meridian Traffic Bureau v. S. Ry. Co.*, 60 I. C. C., 5, after referring to the sparse population and light local traffic on defendant's lines in Alabama and to the heavy cost of construction and maintenance and severe operating conditions on the line from Artesia, we prescribed a class scale for application between Meridian, Miss., and certain Alabama points, which, although 10 per cent higher than the scale contemporaneously authorized for use on the Southern and Alabama Great Southern, is class for class materially lower than defendant's interstate rates here under consideration. In *Rates to and from Nashville*, *supra*, a scale was proposed by the Nashville, Chattanooga & St. Louis which is substantially lower than defendant's interstate rates. At 151 miles, the distance between Nashville and Chattanooga, this scale resulted in a rate of \$1.15 first class. Although the scale was neither approved nor disapproved for general appli-

cation, we prescribed a first-class rate between Nashville and Chattanooga of 90 cents. The following compilation from exhibits of record compares the scales referred to with present rates from Corinth:

Distance.	Classes.									
	1	2	3	4	5	6	A	B	C	D
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
5.....	39.5	34.5	30	25	22	17.5	17.5	24	14.5	11.5
	31	27	24	20	16	14	11	12	9	8
	34.5	29.5	26.5	22	18	15	12.5	14.5	11.5	9
10.....	44	37.5	34.5	28	24	20.5	20.5	25	15.5	12.5
	36	31	27	23	19	16	13	14	11	9
	34.5	29.5	26.5	22	18	15	12.5	14	12.5	9.5
30.....	62.5	55	49	40.5	34.5	28	28	34.5	25	20.5
	54	46	41	35	28	24	19	22	16	14
	50	42.5	36.5	29.5	26.5	20.5	20.5	22.5	16.5	13
50.....	80	69	61.5	52	44	36.5	36.5	40.5	31.5	25
	69	59	52	44	36	30	24	29	21	17
	70.5	60.5	50	40	36.5	29.5	27.5	29.5	20	15.5
60.....	83	72	64.5	53	45.5	37.5	37.5	42.5	31.5	25
	74	64	56	47	38	33	26	30	22	19
	81.5	69	57	45	41.5	34	31.5	33	20	15.5

<sup>1</sup> Mobile & Ohio, interstate.

<sup>2</sup> Nashville, Chattanooga & St. Louis (proposed), 61 I. C. C., 338.

<sup>3</sup> Mobile & Ohio, Meridian to Alabama, 60 I. C. C., 5.

The rate of 90 cents between Nashville and Chattanooga applies over the Nashville, Chattanooga & St. Louis, where traffic density and operating conditions are said not to be as favorable as on the Mobile & Ohio. A statement of railway operating statistics for the year ended December 31, 1920, introduced by defendant, shows the traffic density on its line to be 1,573,387 revenue ton-miles per mile of road as against 1,064,739 for the Nashville, Chattanooga & St. Louis. In view of these circumstances it seems difficult to sustain here a first-class rate of 83 cents for 60 miles. The testimony shows that the unfavorable conditions obtaining on defendant's line from Artesia into Alabama do not exist between Jackson and Corinth. The present record justifies rates for application between points here under consideration somewhat different from those approved in the *Meridian Case*.

We are of opinion and find that the class rates from Corinth, Miss., to points in Tennessee on defendant's line between Corinth and Jackson, Miss., are and for the future will be unreasonable to the extent that they exceed rates for corresponding distances shown in the following table:

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Distance.	Classes.									
	1	2	3	4	5	6	A	B	C	D
<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
5.....	35	39	28.5	22.5	15	15	10	12	9.5	8.5
10 and over 5.....	39	33.5	29.5	25	20.5	17	11.5	12.5	10.5	9.5
15 and over 10.....	43	37	32.5	27.5	22.5	18.5	12.5	15	11.5	10.5
20 and over 15.....	47	40.5	35.5	30	24.5	20	13.5	16.5	12.5	11.5
25 and over 20.....	51	44	39	32.5	26.5	22	15	18	14	12
30 and over 25.....	54	46.5	41	34.5	28	23	15.5	19	14.5	13
35 and over 30.....	57	49	43.5	36.5	29.5	24.5	16.5	20	15.5	13.5
40 and over 35.....	60	51.5	45.5	38.5	31	26	17.5	21	16	14.5
45 and over 40.....	63	54	48	40.5	33	27	18.5	22	17	15
50 and over 45.....	65	56	49.5	41.5	34	28	19	23	17.5	15.5
55 and over 50.....	67	57.5	51	43	35	29	19.5	23.5	18	16
60 and over 55.....	69	59.5	52.5	44	36	29.5	20	24	18.5	16.5

We further find that traffic moves between Corinth and said points in Tennessee under transportation conditions that are substantially similar to the conditions governing the corresponding movement of traffic between Jackson and such points in Tennessee; and that the class rates between Corinth and said points and between Jackson and the same points are and for the future will be unduly prejudicial to Corinth and shippers there located and unduly preferential of Jackson and shippers there located to the extent that the class rates from Corinth to said points exceed or may exceed the class rates contemporaneously maintained for like distances between Jackson and said points in Tennessee.

An appropriate order will be entered.

63 I. C. C.

No. 12103.

PARKERSBURG RIG &amp; REEL COMPANY

v.

TEXAS &amp; PACIFIC RAILWAY COMPANY ET AL.

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*Submitted August 1, 1921. Decided January 30, 1922.*

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Rates on yellow-pine lumber, in carloads, from Ranger, Tex., to Duncan, Tulsa, and Walters, Okla., found unreasonable. Reasonable maximum rates prescribed and reparation awarded.

*V. E. Milsark* for complainant.

*L. M. Hogsett, L. P. Nash, R. C. Trovillion, Charles R. Webber, George Thompson, and Robert Thompson* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by complainant and defendants to the report proposed by the examiner.

Complainant, a corporation engaged in the manufacture and sale of wood and steel tanks and oil-well supplies, by complaint alleges that the rates on carload shipments of yellow-pine lumber from Ranger, Tex., to Duncan, Tulsa, and Walters, Okla., between July 12 and November 22, 1920, were unreasonable, unjustly discriminatory, unduly prejudicial and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. We are asked to prescribe reasonable and nonprejudicial rates for the future and to award reparation. Rates will be stated in cents per 100 pounds.

Ranger is 95 miles west of Fort Worth, Tex., on the main line of the Texas & Pacific to El Paso, Tex. It is approximately 64 miles west of Weatherford, Tex., and 20 miles east of Cisco, Tex., on the same line.

Complainant has made Ranger its headquarters for supplying the oil fields of Texas and southwestern Oklahoma. The lumber was to be used as decking for wooden oil tanks. Ranger is not in a lumber-producing territory, but at times complainant carries in stock there a quantity equivalent to 30 or 40 carloads of this kind of material.

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Complainant shipped 1 carload to Walters on September 3, 1920; 1 to Duncan on September 25, 1920; and 10 to Tulsa, some before and some after August 26, 1920. All moved over the Texas & Pacific to Fort Worth. Thence the shipments to Walters and Duncan moved over the Chicago, Rock Island & Pacific, and those to Tulsa over the Missouri, Kansas & Texas or the St. Louis-San Francisco. The rates charged were, to Walters, 39 cents; to Duncan, 52.5 cents; and to Tulsa, 41 and 44.5 cents before August 26, 1920, and from 55.5 to 64.5 cents thereafter. The tariff authority for these rates is not clear. Combination rates of 44.5 cents prior to August 26, 1920, and 60 cents thereafter were applicable, consisting of class-D rates to Weatherford of 15.5 cents and 21 cents, and commodity rates beyond of 29 cents and 39 cents, before and after that date, respectively. Accordingly there are outstanding overcharges and undercharges.

Complainant contends that prior to August 26, 1920, the rates charged should not have exceeded 29 cents to Tulsa and 23.5 cents to Duncan and Walters; and that after that date, the corresponding rates should not have exceeded 39 cents to Tulsa and 31.5 cents to Duncan and Walters. These rates to Tulsa were contemporaneously in effect from Cisco and Weatherford, and the basis sought to Duncan and Walters was contemporaneously maintained from Cisco and Weatherford to Texarkana, Tex.

Defendants urge that no lumber moves from Cisco on the rates instanced by complainant. To Oklahoma, Weatherford is the most westerly point of origin in the southwestern lumber blanket, which extends 400 miles to the east, as far as Alexandria and Lake Charles, La. The destinations in Oklahoma are also grouped. Although Ranger is in Texas common-point territory, it is not on the same rate basis as Weatherford for some classes of traffic, especially heavy commodities, moving to or from Oklahoma points, Kansas City, or other defined territories.

At an average loading of approximately 34 tons, the earnings under the applicable rates from Ranger, as compared with the rates sought, are:

	Distance.	Rate.		Car-mile revenue.		Ton-mile revenue.	
		Prior to Aug. 26, 1920.	On and after Aug. 26, 1920.	Prior to Aug. 26, 1920.	On and after Aug. 26, 1920.	Prior to Aug. 26, 1920.	On and after Aug. 26, 1920.
Rate applicable to—	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Mills.</i>
Tulsa.....	400	44.5	60	75.7	102	22.3	30
Duncan.....	233	44.5	60	129.9	175	38.2	51.5
Walters.....	231	44.5	60	131	176.0	38.5	51.9
Rate sought to—							
Tulsa.....	400	29	39	46.3	66.3	14.5	19.5
Duncan.....	233	23.5	31.5	68.6	91.9	20.2	27
Walters.....	231	23.5	31.5	69.2	92.7	20.3	27.1

The disparity in revenues, as between the three destinations, is due to the fact that the rates from Texas are blanketed to points in Oklahoma, and the measure of the rates is controlled by the extensive southwestern lumber blanket.

Complainant alleges that the long-and-short-haul provision of the fourth section is violated by the maintenance of rates from Ranger to points east of the Mississippi and north of the Ohio rivers which are lower than those contemporaneously in effect over the same route to Tulsa. The rates to the more distant points are 45.5 cents to Cincinnati, Ohio, 48.5 cents to Columbus, Ohio, 43.5 cents to Seymour, Ind., and 54.5 cents to Parkersburg, W. Va. Prior to August 26, 1920, these rates were 34, 36.5, 32.5, and 41 cents, respectively. They were and are lower than those contemporaneously in effect from Ranger to Tulsa. These departures from the fourth section are not protected and were and are unlawful. The findings herein will remove them.

The allegations of unjust discrimination and undue prejudice are not sustained by the evidence.

We find that the rates charged for the transportation of shipments of yellow-pine lumber, in carloads, from Ranger to Tulsa, Duncan, and Walters were, are, and for the future will be unreasonable to the extent that they exceeded 29 cents per 100 pounds during the period between July 12 and August 25, 1920, inclusive, and 39 cents per 100 pounds thereafter. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. Proper allowance should be made for all overcharges and undercharges.

An appropriate order will be entered.

66 I. C. C.

No. 10858.<sup>1</sup>

STATE OF IDAHO, EX REL. PUBLIC UTILITIES  
COMMISSION OF THE STATE OF IDAHO,  
v.  
DIRECTOR GENERAL, OREGON SHORT LINE RAILROAD  
COMPANY, ET AL.

*Submitted January 7, 1921. Decided February 6, 1922.*

1. The maintenance of interstate rates on commodities, the rates on which are blanketed, from and to points on the Wilder and Murphy branches of the Oregon Short Line, higher than the rates contemporaneously maintained from and to Nampa, Emmett, and Boise, Idaho; and maintenance of rates stated upon a graded basis from and to points on these branches higher than from and to points for like distances on the Emmett and Boise branches; not found unreasonable but found unduly prejudicial. Undue prejudice ordered removed.
2. Rates to and from points on the line of the Caldwell Traction Company from and to interstate destinations not found unreasonable or unduly prejudicial.

*Raymond L. Givens and John E. Benton for complainants.  
R. V. Fletcher, H. A. Scandrett, George H. Smith, J. T. Hammond, jr., J. M. Souby, and L. T. Wilcox for defendants.*

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions were filed by complainant and defendants to the reports proposed by the examiner and the parties were heard in oral argument. In view of the similarity of the issues raised by the complaints these cases have been consolidated and will be disposed of in one report.

The complaint in No. 10858 was brought on behalf of shippers located on the lines of the Caldwell Traction Company, an electric line connecting with the Oregon Short Line at Caldwell, Idaho, and operating from that point two branch lines, each about 11 miles long, terminating at Wilder and McNeil, Idaho, respectively. At the time of the first hearing herein, December 27, 1919, the Wilder branch

<sup>1</sup> This report also embraces No. 11886, *Same v. Oregon Short Line Railroad Company et al.*

was being operated under a 50-year lease from the Oregon Short Line. Under through billing arrangements, freight charges to and from points on the lines of the traction company were assessed on basis of the combination of locals on Caldwell. The complaint attacked the existing rates to and from all interstate points as unreasonable and unduly prejudicial. The establishment of reasonable and nondiscriminatory joint rates on all commodities was requested for the future.

Subsequent to the issuance of the report proposed by the examiner the Caldwell Traction Company forfeited its lease of the Wilder branch and that line was taken back and its operation as a part of the Oregon Short Line resumed. Because of this change in conditions in so far as points on the Wilder branch are concerned, a petition to rehear was granted and a further hearing had, at which it was agreed by the parties that the issue now presented with respect to the Wilder branch is identical with that presented in No. 11386. The testimony of the principal witnesses in the latter case was thereupon made a part of the record in No. 10858.

The complaint in No. 11386 alleges that the rates applicable upon all commodities, particularly potatoes, live stock, and all farm products from and to points on the Murphy branch of the Oregon Short Line, extending from Nampa, Idaho, the main-line junction point, to Murphy, Idaho, to and from all interstate points, are unreasonable and unduly prejudicial, in violation of sections 1 and 3 of the interstate commerce act, particularly in that they exceed the rates charged upon the same commodities for similar distances on the main line of that carrier. Reasonable and nonprejudicial rates for the future are sought. The Glendale Potato Growers' Association intervened to support the attack on the interstate rates on potatoes from Murphy branch points.

The Oregon Short Line is the only important interstate carrier operating in southern Idaho. The main line enters the state on the east at Border, Wyo., and passes out of the state on the west at Weiser, Idaho, a distance of 426 miles. The Murphy branch extends southward from Nampa, a distance of 30 miles to Murphy. Two other branches extend from Nampa, the Boise branch running 20 miles to Boise, Idaho, and the Lakeport branch running 129 miles to Lakeport, Idaho, extending through Emmett, Idaho, Emmett being 27 miles from Nampa. Emmett is connected with the main line by another branch line from Payette, Idaho, the distance from Payette to Emmett being 30 miles. The branch from Nampa to Emmett and the branch from Payette to Emmett when taken together form a line about 10 miles longer than the main line between Nampa and Payette. Caldwell is 9 miles west of Nampa.



The Murphy and Wilder branches serve what is known as the Deer Flat country, immediately adjacent to the Boise Valley. Its lands are stated to be very fertile, producing large quantities of potatoes and grain, and it is also a stock-raising country. It receives its water for irrigation purposes from the Deer Flat reservoir and from the Arrow Rock dam, a government project located on the Boise River. The Boise Valley also receives its water from the Boise River. That valley extends from the main line of the Oregon Short Line on the south to the hills on the north, some 20 to 30 miles distant, and is served in part by the main line and in part by the Boise branch. The branch extending from Nampa to Emmett runs through the lower end of that valley and into the Emmett Valley. The Emmett Valley follows the Payette River and the principal town in that valley is Emmett. The three territories—the Boise Valley, the Emmett Valley, and the Deer Flat country—are near each other and have interests in common, and it is accordingly contended that they should be considered as one community. The extreme width of the three territories does not exceed 60 miles. The chief ground of contention at the hearing was that Murphy is not accorded the same rates as Boise and Emmett. Commodity rates from and to both Emmett and Boise to and from interstate points are generally the same as the rates from and to Nampa—the main-line point—while from and to Murphy the rates are made by adding the differentials over Nampa, the rates on fruits outbound and coal from Wyoming alone excepted.

Defendants contend that the allegations of the complaint referred to main-line points generally and were not sufficiently explicit to put them on notice that complainants would present their case with reference mainly to the Boise branch and the branches to Emmett. But defendants also contend that the lines from Nampa and Payette to Emmett are not branch lines, but form a second main line between Nampa and Payette. The record shows that seldom does main-line traffic between Nampa and Payette move via Emmett. Furthermore, defendants' justification for the application of the Nampa rate to Emmett is not that this route is operated as a main line, but that any higher rate would be in violation of the fourth section, because main-line traffic might move through Emmett.

When asked if they desired a rehearing or a further hearing in view of their contention that they had not had an adequate opportunity to make up the record to answer complainant's case as to the Boise and Emmett branches, defendants stated that they did not. We are of opinion that complainant was within the allegations of its complaints in presenting evidence of the rates on these branch lines to show undue prejudice.

The rate situation applicable from and to Boise, it is stated, is one that has existed practically since the beginning of operations by the Oregon Short Line. Boise is the capital and largest city in the state of Idaho. Being the capital gives it a certain prestige which, together with the fact that it is the largest jobbing and wholesale point in the state, has led to its being accorded the main-line and Nampa rates. The amount of business handled on the Boise branch, both passenger and freight, is said to bear no comparison to that of the Murphy branch on which only 500 people live.

Rates to and from points on the Oregon Short Line are largely made upon a blanket basis. Rates from eastern defined territories are blanketed to all points in the Pacific northwest, including branch-line as well as main-line points on the Oregon Short line. Commodity rates generally from Chicago, Ill., westbound, are blanketed from the eastern to the western boundary of Idaho, and branch-line points, including points on the Murphy branch, are carried upon the same basis as main-line points. Eastbound from Portland, Oreg., and Spokane, Wash., the rates on many commodities are blanketed, and the same rates apply to all main-line points on the Oregon Short Line from Weiser, on the west, to Payson, Utah, a distance of 538 miles. Weiser is 59 miles west of Nampa. From Murphy differentials varying from 11 to 38.5 cents apply on the different commodities named in an exhibit of record. It is stated that westbound rates on certain commodities when destined to Portland and Spokane are blanketed from Utah common points as far west as Weiser, but when like shipments originate on the Murphy branch a differential must be added to the blanket rate. Rates on commodities produced in Idaho are also largely blanketed as to points of production. Fruit rates are blanketed from Huntington, Oreg., on the west, to Pocatello, Idaho, on the east, a distance of 327 miles, when destined to far eastern points such as New York, Pittsburgh, and Boston, and the blanket rate is applied from all branch-line points within the blanket, including the Murphy branch as before noted.

On grain the rates to eastern points of destination are blanketed from Disney, Idaho, on the east to Weiser on the west, a distance of 192 miles, but the rates from Murphy are 4 cents higher than from Nampa. Rates on hay to eastern destinations are blanketed from Moxa, Wyo., on the east, to Bliss, Idaho, on the west, a distance of 343 miles, including the Twin Falls and Wood River branches. Rates from Murphy are 3.5 cents higher than the blanket rate. Rates on wool in bales to eastern points are said to be graded. From Murphy the rates are 5 cents higher than from Nampa. On live stock the rates from main-line points are also usually graded to eastern destinations but from Murphy they are 3.5 cents over Nampa.

There is an extensive showing of the blanket-rate system employed by the Oregon Short Line in stating its commodity rates to and from interstate points from which it appears that, with the exception of Emmett and Boise, the rates to and from branch-line points are generally a varying differential over the main-line junction-point rates. Numerous rate exhibits were introduced by both complainant and defendants from which it is apparent that no uniform system of branch-line differentials is employed in constructing the interstate rates applicable on any of the 973 miles of branch-line mileage, the Murphy branch being no exception in this respect. The rate situation generally prevailing, it is contended, is unduly prejudicial to the branch-line points in favor of main-line points.

To remove the prejudice which it is contended exists against Murphy and in favor of Boise and Emmett, and to accord points on the Murphy branch reasonable rates, complainants propose that when rates are blanketed, Murphy should take the blanket rate, and that when they are graded the rate from Murphy should be a differential over Nampa constructed by doubling the earnings per ton-mile under the respective rates from Nampa to destination and applying those doubled earnings to the haul on the branch line. In other words, give the carrier twice the ton-mile earnings for that part of the haul over the Murphy branch that it receives under its rate for the respective main-line haul.

From an exhibit offered by defendants it appears that during the year 1919 there were 1,736 cars of various commodities shipped from the several stations on the Murphy branch and 264 cars received at such stations, and that there were 224 cars shipped between stations on this branch and a total l. c. l. tonnage of 4,751,300 pounds. The total tonnage in pounds was 69,020,936, on which a total income of \$32,232.69 was received. The revenue on the l. c. l. shipments was estimated by taking the average of the first, second, third, and fourth class rates from the respective stations to Nampa and applying such average rates to the total l. c. l. tonnage from the respective stations.

Operating statistics for the year 1919 for the Murphy branch show net ton-miles, 842,779; gross ton-miles, 4,360,152; net tons per train 38.33, as compared to 1,400,847 net ton-miles, 5,835,920 gross ton-miles, and 62.58 net tons per train for the Payette branch; and 133,250,854 net ton-miles, 379,054,411 gross ton-miles, and 140.58 net tons per train for the 1,377.41 miles of branch lines; and 2,787,368,937 net ton-miles, 5,742,477,023 gross ton-miles, and 762.08 net tons per train for the 970.18 miles of main line. Defendants contend, based upon this showing, that traffic destined to or having origin on the Murphy branch should pay

something toward the cost of operating this branch, but explain that by this they do not mean that the Murphy branch or any other branch should be called upon to pay its own way in the same manner as if it were an independently operated railroad.

While exhibits were filed showing comparative rates on many commodities, the evidence was directed mainly to rates on potatoes. The Deer Flat country has been developed as a farming section within the past 10 years. Peculiarly favorable conditions of soil and climate have encouraged the growing of potatoes, which have supplanted other crops formerly produced in that region.

The rates on potatoes to eastern points of destination in which the intervening Potato Growers' Association is particularly interested are blanketed from main-line points from Bliss on the east to Weiser on the west, a distance of 167 miles. Points on the Murphy branch pay differentials over the blanket rate varying from 2.5 to 7.5 cents for branch-line hauls varying from 9 to 30 miles. These differentials are compared with those which apply from points on the Minidoka branch of the Oregon Short Line on potatoes to Portland. Minidoka, the junction point, is 186 miles east of Nampa and takes the blanket rate of 44 cents, which also applies from the latter point to Portland. Rogerson and Buhl, Idaho, on the Minidoka branch, take differentials of 7.5 cents and 3.5 cents over Minidoka on such traffic for additional distances of 88 miles and 74 miles, respectively.

With respect to the potato rates, it is further shown that the rates from Idaho Falls, Idaho, to eastern, Texas, and southeastern points are 12.5 cents higher than the rates from Greeley, Colo. The distance between Greeley and Idaho Falls is stated to be 750 miles. The rates from Nampa to these territories are 6.5 cents higher than the corresponding rates from Idaho Falls, and the distance between these points is 295 miles. If the 5-cent differential applicable to Murphy over Nampa is added to the 6.5-cent differential of Nampa over Idaho Falls, the spread between Idaho Falls and Murphy is 11.5 cents for a difference in distance of 325 miles. When this differential of 11.5 cents is compared with the 12.5-cent spread between Idaho Falls and Greeley for a 750-mile additional haul, the complainants contend that the Murphy differential is shown to be unreasonable and that it is likewise unreasonable when compared with the rates from points in Oregon and Washington which, for distances of 700 and 800 miles, in excess of the distance from Murphy, are only 2.5 cents over the Murphy rates.

For the defendants it is stated that the potato-rate adjustment is one in which the Oregon Short Line has made an extreme effort to put in a basis from Idaho that will permit the Idaho farmers to

66 L.C. G.

compete with Colorado producers, and that for this reason the 12.5-cent difference in rate between Greeley and Idaho Falls for a 750-mile difference in distance should not be taken as a proper measure of relationship between points in Idaho.

With respect to the Wilder branch, defendants stated at the hearing that it was their intention to restore the same basis of rates to and from points on that branch as was in effect prior to its operation by the traction company, with appropriate adjustments to take care of any increase in the general rate level since that date. As indicated above, the evidence offered with respect to the Murphy branch is relied upon to sustain the allegations of the complaint with respect to rates from and to points on the Wilder branch. Very little evidence was offered with respect to rates to and from points on the McNeil branch of the Caldwell Traction Company except comparisons of those rates with rates from points on branch lines of the Oregon Short Line. This record will not support a finding that the combination rates assailed to and from points on the McNeil branch of the traction line are unreasonable or unduly prejudicial.

Defendants' contentions that additional charges should be levied for branch-line service in addition to the rates to and from the main-line junction points would be well founded were it not for the fact that the rates involved are in large measure blanket rates, and the further fact that the defendants, without any persuasive showing of dissimilarity, do not observe the rule on which their contention is based with respect to the Boise and Emmett branches serving territories adjacent to that served by the Murphy and Wilder branches.

The traffic density on the Murphy and Wilder branches may be light, but their operating costs are relatively light also. What the operating cost figures are for the Emmett branch do not appear, but if the \$204,830.74 that it cost to operate the Boise branch in 1919 could be absorbed without any additional charge, in general, for operation over that branch, no sufficient reason appears why the same treatment should not be accorded Murphy, especially when like treatment is also accorded Emmett. If the principle of an additional charge is sound for application in the case of Murphy and Wilder, it should likewise apply to Boise and Emmett. The fact that it is not applied at either of the latter points would indicate that for this particular district the defendants do not recognize it as a principle which should control with respect to the blanket rates at least. Their rate exhibits show that on other branches the rates are generally higher than those applicable at the main-line junctions.

When points distributed over an extensive area are grouped and a blanket rate applied to or from all such points, the fact that points lying within that blanket are on a branch line does not argue as

strongly that there should be a branch-line differential as when the rates are applied upon a graded basis. The question of whether or not there should be such a differential in connection with blanket rates depends in a large measure upon how extensive the blanket is. In the territory involved the blankets are necessarily large. In an extensive blanket a branch-line haul of 30 miles loses its significance unless it is made to appear that the branch-line operation is much more expensive than main-line operations from remoter parts of the blanket.

In no instance was any attempt made by complainants to prove that any particular rate from or to any point outside the state of Idaho was unreasonable, and all of the proof was addressed to showing the difference in rates only. These records will not support a finding of unreasonableness.

Upon these records we find that the maintenance by defendants of blanket interstate rates on potatoes, grain, hay, and other commodities, from and to Nampa, Emmett, and Boise, lower than the rates contemporaneously maintained on like traffic from and to points on the Murphy and Wilder branches results in undue prejudice against the points on such branches and in undue preference of Nampa, Emmett, and Boise, to the extent of the difference in such rates. We further find that the maintenance of interstate rates on commodities, the rates on which are stated on a graded or mileage basis from and to points on the Wilder and Murphy branches higher than are contemporaneously maintained from and to points on the Emmett and Boise branches, results in undue prejudice against points on the former, and in undue preference of points on the latter branches, to the extent that the branch-line differentials on the former exceed those contemporaneously maintained on like traffic from and to points on the latter branches for like distances from the main-line junction.

An order will be entered requiring the removal of the undue prejudice found to exist.

HALL, *Commissioner*, dissenting in part:

The report properly finds that the records in these two cases will not support a finding of unreasonableness. The further finding of undue prejudice to points on the Murphy and Wilder branches and undue preference of points on the Emmett and Boise branches is not responsive to any issue presented by the pleadings or, to my mind, supported by the evidence. For one thing, no competition is shown. The complaint should be dismissed.

I am authorized by COMMISSIONER LEWIS to say that he concurs in these views.

No. 11716.<sup>1</sup>

CLINTON PAVING BRICK COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & EASTERN  
ILLINOIS RAILROAD COMPANY, ET AL.

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*Submitted October 24, 1921. Decided February 21, 1922.*

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Rates on mine-run bituminous coal, in carloads, from certain mines in the Clinton and Brazil districts in Indiana to complainants' plants at Clinton, Locan, Mount Silica, and Brazil, Ind., during federal control, found unreasonable. Reparation awarded.

*R. B. Coapstick* for complainants.

*K. L. Richmond* and *John F. Finerty* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

## BY DIVISION 1:

These four cases bring in issue the reasonableness of the rates charged subsequent to June 24, 1918, for the transportation of mine-run bituminous coal in carloads from mines in the Clinton and Brazil districts in Indiana to industries in Clinton, Locan, Mount Silica, and Brazil, in the same state. The complaints allege that the rates were unjust and unreasonable in violation of section 1 of the interstate commerce act and section 10 of the federal control act. Reparation is asked. As the traffic was intrastate the issues are limited to the period from June 25, 1918, to the termination of federal control, February 29, 1920. Rates herein are stated in cents per ton of 2,000 pounds.

Clinton is on the Chicago & Eastern Illinois Railroad, hereinafter called the Eastern Illinois, about 15 miles north of Terre Haute, Ind. It is on the border of what is known as the Clinton coal district. Locan and Mount Silica are on the Eastern Illinois about 7 miles and 10 miles, respectively, north of Clinton. Brazil is 22 miles east of

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<sup>1</sup> This report also embraces No. 11723, National Drain Tile Company v. Same; No. 11742, Brazil Clay Company v. Director General, as Agent, Central Indiana Railway Company, et al.; No. 11742 (Sub-No. 1), Clay Products Company v. Director General, as Agent, Central Indiana Railway Company, et al.; and No. 11816, Southern Fire Brick & Clay Company v. Director General, as Agent, Chicago & Eastern Illinois Railroad Company, et al.

Clinton in the Brazil coal district. That point is served by the Eastern Illinois, Central Indiana, and Pittsburgh, Cincinnati, Chicago & St. Louis, hereinafter called the Pennsylvania.

The Clinton district comprises a number of mines immediately west and southwest of Clinton which are served by the so-called north and south branches of the Eastern Illinois. These branch lines connect with the main line at the south end of a classification yard, known as Jackson yard, about 0.6 mile north of Clinton station. The average distance from the mines in this district to Jackson yard is 5.8 miles.

Empty cars used for the movement of coal from the Clinton district are first assembled in Jackson yard. The cars, after loading, are partially classified at the mines, or, when loaded at mines on the south branch, at a near-by storage yard, and are then moved to Jackson yard where they are further classified according to destination. Loading tracks at the mines are constructed on a slight grade and no switching is required in moving the loaded cars from the tipple. Mine weights are used and the cars are not hauled to track scales. The initial movements from Jackson yards to the mines and from the mines to the yard are performed by what are termed "mine crews" and are the same whether the destination of the coal is an industry in Clinton or a point beyond.

The Clinton Paving Brick Company and the Wabash Valley Electric Company, complainants in No. 11716, operate a brick and power plant respectively, at Clinton. The brick plant is intermediate between mines on the north branch and Jackson yard and the power plant is in the immediate vicinity of Clinton station. With the possible exception of a few shipments which originated at mines not clearly disclosed on the record, the coal used by these complainants was shipped from mines on the north branch. The average haul to both plants was 5.4 miles. Although the average distance to the brick plant is somewhat less defendant explains that because of the heavy grade at that point it is impractical to stop trains there when containing more than 8 or 10 cars, and for that reason 75 per cent of the traffic is hauled to Jackson yard and back.

The complainant in No. 11723 is the National Drain Tile Company, located at Locan. Coal used by this company during the period of the complaint originated at mines in the Clinton district and was moved to Jackson yard by mine crews and thence in local freight trains. The average haul from these mines was approximately 11.6 miles, although some shipments from mines on the south branch moved a distance of 15.5 miles. The main line of the Eastern Illinois at Locan is double tracked and in delivering cars from the Clinton district a crossover is required to reach complainant's spur.



Most of the coal covered by the complaint in No. 11816, brought by the Southern Fire Brick & Clay Company of Mount Silica, also originated in the Clinton district. As in the case of shipments to Locan, the initial movement was to Jackson yard and thence by local freight trains to destination, an average haul of 16 miles. Some of the coal purchased by this complainant originated at a mine near Ehrmandale, Ind., in the Brazil district, 6 miles west of Brazil and 16 miles east of Clinton, and moved over a short branch line of the Eastern Illinois connecting near Ehrmandale with its Otter Creek branch. The empty cars for this mine are supplied from the Brazil yard and are handled by mine crews which take out the empties and return to Brazil with the loads. For operating reasons shipments for Mount Silica are usually back-hauled to Brazil instead of being set out at Ehrmandale or Otter Creek Junction, thus adding 12 miles to the haul. The movement from Brazil, Ehrmandale, or Otter Creek Junction is in local trains through Jackson yard to destination. Excluding the out-of-line haul the distance from this mine to Mount Silica is 27.9 miles.

Complainant in No. 11742 is the Brazil Clay Company and in Sub-No. 1, the Clay Products Company. These companies are located within the Brazil switching district and manufacture brick and tile, respectively. The plant of the Brazil Clay Company is in the western part of Brazil on the Eastern Illinois. The Clay Products Company operates two plants, one in the northern part and the other in the southern part of the Brazil switching district. The former is served by the Pennsylvania and Eastern Illinois and the latter by the Pennsylvania only. The various shipments involved in this complaint originated principally at mines in the Brazil coal district on the Eastern Illinois near Coal Bluff; on the Central Indiana at Superior and Carbon, and on the Pennsylvania near Centerpoint and other points in the vicinity of Brazil. Some coal moved from a mine in the Clinton district and a few shipments were made from a small mine owned by this complainant located a short distance south of Brazil. The latter mine is at the end of a spur owned by complainant about  $2\frac{1}{4}$  miles in length connecting with the Pennsylvania at a point near its south plant. The cars from this mine are moved by complainant's power to the Pennsylvania connection, thence by the latter 2 miles to Knightsville for weighing, after which they are returned to Brazil and delivered at the north plant, a total distance apparently of 7 miles or more.

Brazil is 21.6 miles from Clinton, 8.2 miles from Coal Bluff, 8.4 miles from Superior, 5.8 miles from Carbon, and 10 miles from Centerpoint. The distance to Brazil from the mine in the Clinton district from which shipments were made is 29.4 miles. The coal

from this mine is assembled in Jackson yard and moves thence to Brazil in local freight trains of the Eastern Illinois. At least two, and sometimes three, carriers are required in making deliveries of coal originating on the Central Indiana to complainant's yards. In this transportation the movement is by local freight trains to Brazil, thence by switching service over the Pennsylvania or Eastern Illinois, or both, to destination. Owing to the grade on the Central Indiana not more than five cars can be handled in one train. Coal originating on the Pennsylvania as a rule moves exclusively over that line. It appears from defendant's evidence that while by the direct route the haul from certain of the mines on the Pennsylvania would not exceed 5 miles, out-of-line hauls are required for weighing, as there are no track scales in Brazil. In some instances the haul is to Knightsville and back, an added distance of 4 miles, and in others to Seelyville, 7 miles from Brazil.

The record shows that on November 15, 1915, no specific rates were published from mines in the Clinton group to Clinton. At that time distance rates applied which for 5 miles and under were 20 cents; 15 miles and over 5, 25 cents; and 30 miles and over 15, 30 cents. A specific rate of 25 cents was then in effect from Clinton to Mount Silica, which was also the rate to Locan by intermediate application of the tariff. A rate of 45 cents was maintained from Ehrmandale to Mount Silica. By June 24, 1918, the distance rates had been increased to 35 cents for 5 miles and under; 40 cents for 15 miles and over 5; and 45 cents for 30 miles and over 15. The rates from Clinton and Ehrmandale to Mount Silica were 40 cents and 60 cents, respectively, the 40-cent rate also applying from Clinton to Locan. During this period specific rates not differing materially from the level of the distance rates applied to Brazil from the mines in the neighborhood of that point on the Pennsylvania and Central Indiana. On June 25, 1918, the distance rates were increased to 60 cents for 15 miles and under, and to 70 cents for 30 miles and over 15. The rate from Clinton to Locan and Mount Silica became on that date 60 cents and from Ehrmandale to Mount Silica 88 cents.

On October 5, 1918, a general revision of rates on coal became effective in Indiana. The mines in the various coal districts were grouped and the minimum rate between points in one group or from one group to an adjacent group was made 70 cents, the distances ranging from 2 or 3 miles to 40 or 45 miles. This was the rate charged on coal from the Clinton group to Clinton and points on the Eastern Illinois as far north thereof as Hillsdale, including Locan, and from the Clinton district and from mines on the Eastern Illinois, Central Indiana, and Pennsylvania in the Brazil district to Brazil.

The rate to Mount Silica from the Clinton district was increased to 85 cents and from Ehrmandale to 95 cents. Effective August 1, 1919, a rate of 60 cents in lieu of the 70-cent rate was published from mines in the Clinton and Brazil districts to Clinton, Terre Haute, and intermediate points, and from mines in the Brazil district to Brazil. No change was made in the rates from Clinton to Brazil, Locan, and Mount Silica, or from Ehrmandale to the latter point. In September, 1920, subsequent to the period of this complaint, and subsequent also to the increases authorized by this Commission in our decision of July 29, 1920, the Public Service Commission of Indiana authorized maximum distance rates for these movements of 55 cents for distances up to 10 miles and 65 cents for distances over 10 miles and under 30, with a maximum rate of \$10 per car for a switching movement which did not include a road haul. It was urged on argument that the group rates established October 5, 1918, and which were charged on shipments moving from mines on the Eastern Illinois in the Clinton district to Clinton and from those in the Brazil district to Brazil were not legally applicable, and that the distance rates in effect until August, 1919, should have been applied.

These distance rates were applicable only in the event that no other rates applied. The group rates applied specifically from the Clinton district to Clinton and from the Brazil district to Brazil and were therefore the legal rates.

Complainants in these cases contend that the following would have been the reasonable maximum rates to have charged on their shipments: From mines in the Clinton district to the plants of the Clinton Paving Brick Company and Wabash Valley Electric Company at Clinton, 35 cents for 5 miles or less, and 40 cents for 10 miles and over 5; from mines in that district to the plants of the National Drain Tile Company at Locan and the Southern Fire Brick and Clay Company at Mount Silica, 45 cents; from Ehrmandale to Mount Silica, 55 cents; and from mines at Superior and Carbon to the Brazil Clay Company at Brazil, 45 cents. The Clay Products Company contends that the rates charged it were unreasonable to the extent that they exceeded \$5 per car on shipments which originated at its mine near Brazil; 30 cents per ton, including switching of intermediate or delivering lines, from mines of the Brazil District Coal Mining Company and the Schrepferman Coal Company; 40 cents on shipments from Centerpoint, Carbon, and Coal Bluff; and 45 cents on shipments from the Clinton district. The evidence shows that on shipments made to the Brazil Clay Company the Pennsylvania and Eastern Illinois assessed switching charges aggregating \$4.50 per car on coal billed from Superior and Carbon, and that the Pennsylvania assessed a switching charge of \$2 per car on

coal billed from Clinton and \$2.50 per car on certain shipments of coal billed from Carbon to the plant of the Clay Products Company. Under tariffs contemporaneously in effect certain of these switching charges should have been absorbed and to that extent they constitute overcharges.

Complainants contend that the majority of these short hauls are analogous to switching movements. Defendants on the other hand assert that the service, although in some cases performed by mine crews, is in all essential respects similar to that required for line hauls. The evidence shows that the movement from mines in the Clinton field to Jackson yard is usually in cuts from 25 to 35 cars and over distances ranging from 3 miles to in excess of 8 miles. From Jackson yard to Locan, Mount Silica, and Brazil, from Ehrmandale to Mount Silica, and from Carbon and Superior on the Central Indiana to Brazil, the movements are by local freight trains. The Pennsylvania employs five engines and crews in the Brazil district which operate passenger service for the miners and handle all freight, carload and less than carload, to and from the mines. It is evident that the rates from the mines in question to complainants' plants should not be made on the theory that the services performed were no more than are customarily performed in industrial switching.

Complainants compare the rates charged from the Clinton and Brazil districts to Clinton and Brazil, respectively, with a number of rates on coal ranging from \$5 per car to 30 cents per ton. Some of these rates applied over distances greater than those to Clinton and Brazil, but it is not shown that they applied to a line-haul movement and apparently all were switching rates. The 60 and 70 cent rates to Locan were compared with a rate of 40 cents on crushed stone from New Paris, Ohio, to Richmond, Ind., 6 miles; and from Ridgeville, Ind., to Red Key and Saratoga, Ind., 7 miles. The shipments from Ehrmandale to Mount Silica moved subsequent to August 1, 1919, and the 95-cent rate then in effect is compared with the group rate of 60 cents established on that date from mines in the Clinton and Brazil districts to Terre Haute, the distance ranging approximately 30 miles, and with a similar rate between certain points in Ohio, the distances between the points shown varying from 26 to 50 miles. Reference is also made to a rate of 90 cents contemporaneously applying from several of the Indiana coal fields to Indianapolis, the assertion being that this rate applied for an average distance of 100 miles and as a joint rate over certain roads, but the history of the rate does not give it value for comparative purposes in this proceeding.

In support of the reasonableness of the rates charged defendants cite numerous rates between points in Ohio, Pennsylvania, Illinois,

West Virginia, and other states, ranging from 60 cents to as high as \$1.03 for distances of 10 miles and less, and from 69 cents to \$1.08 for distances of from 12 to 24 miles. These apparently were group rates, and the record is silent both as to the circumstances under which they were established and the extent of the services rendered. Defendants also cite many decisions of the Commission in which group rates have been approved and argue that the group adjustment here assailed was of benefit to complainants, in that when they were unable to obtain coal from the near-by mines which usually supply them they were in position to make purchases from any of the other more distant mines within the group and still enjoy the same rate. The principle of group rates, particularly when applied to areas containing natural resources, has long been sanctioned, but such rates have frequently been condemned when the minimum hauls are so disproportionate to the maximum hauls as to impose unreasonable or otherwise unlawful charges for the shorter distances. *Utilities Development Corp. v. P., C., C. & St. L. R. R. Co.*, 56 I. C. C., 694, and cases there cited.

With reference to the rates authorized by the Public Service Commission of Indiana in September, 1920, and made effective the following month, for the movement of coal over distances of 30 miles and under, defendants claim that they are not compensatory and have never been acquiesced in by the carriers. These rates, however, were the subject of investigation by this Commission in *Indiana Rates, Fares, and Charges*, 60 I. C. C., 337, and 62 I. C. C., 648, and no increases therein were required. Eliminating the 40 per cent increase in rates in the eastern group authorized July 29, 1920, the 55-cent rate published by the Indiana Commission for hauls of 10 miles and under would be approximately 40 cents, and the 65-cent rate for hauls of 30 miles and over 10 about 46.5 cents.

The principal defense offered by carriers serving the Brazil district is based on a determination of the terminal cost of handling the traffic computed on the so-called Saur-Coverston formula. This is explained as a formula for the assignment of certain operating expenses to determine the terminal cost of handling specific kinds of freight. It is predicated on time records kept during a test period of two weeks by station, yard, and other employees directly concerned and includes an estimated cost per car per day for repairs, depreciation, and retirements, plus a proportion for maintenance and overhead expense and an estimated cost per engine-hour which is reduced to a cost per hour for each element of service. The combined result is an estimated cost per car for the service actually performed and, finally, an average cost per ton for the particular traffic under investigation. An operating ratio of 66.67 per cent is then

applied to produce a rate which would bear its due proportion of fixed charges, such as taxes, interest on bonds, and dividends. By the use of this formula defendants arrive at the following estimated cost for the service in moving the coal to the plants of complainants in No. 11742 and 11742 (Sub-No. 1): From Superior and Carbon to the Brazil Clay Company, 72 cents, and from Carbon to the Clay Products Company, 65 cents, with a general average from all mines of 48 cents. Applying the operating ratio of 66.67 per cent, the rates would be, respectively, 108, 97.5, and 72 cents.

Complainants challenge these cost figures and point out that they include the cost of out-of-line movements of the cars to track scales, in some cases 4 miles and in others 14 miles. They contend that these movements for weighing purposes were for the carriers' convenience and should not be against the shippers. Objection is also made to the operating ratio and wage scale employed. The ratio of expense to revenue at the time these shipments moved was approximately 90 per cent instead of 66.67 per cent, and the application of the higher ratio would produce a correspondingly lower rate. The costs were based on the rates of pay in effect in September and October, 1920, which were substantially higher than during the period covered by the complainants. The figures submitted are not susceptible of check and we are unable to accept defendants' estimated costs as approximating the actual costs incurred at the time this traffic moved.

In *Utilities Development Corp. v. P., C., & St. L. R. R. Co.*, *supra*, cited by complainants, we had under consideration the propriety of a rate of 70 cents charged on and after June 25, 1918, on shipments of coal from Bicknell to Edwardsport, Ind., on the Indiana-Vincennes division of the Pennsylvania. The distance between these points is 4.4 miles. That rate was a group rate made effective by the Director General of Railroads in general order No. 28, and applied between points ranging from 2 miles to 45 miles apart. It was contended there, as here, that short-haul movements of this character are substantially a switching service and should be so considered in judging the reasonableness of the rates. Rejecting this contention but pointing out the impropriety of a group adjustment with such glaring disparities in distances, we held the rate to be unreasonable to the extent that it exceeded 40 cents. The rate there found reasonable was taken by the Indiana commission as the basis for the short-haul rates established by that body which, as hereinbefore stated, were considered in *Indiana Rates, Fares, and Charges*, *supra*.

We find that the rates here assailed were unreasonable to the extent that they exceeded the following: From mines in the Clinton

district to Clinton, 45 cents, and to Locan and Mount Silica, 60 cents; from the mine near Ehrmandale, in the Brazil district, to Mount Silica, 70 cents; from mines in the Clinton district and from Superior and Carbon to the plants of the Brazil Coal Company or Clay Products Company at Brazil, 60 cents; from Coal Bluff, Centerpoint, and other mines in the vicinity of Brazil, except complainant's mine to the plant of the Clay Products Company, 45 cents; and from the mine of the Clay Products Company to that company's north plant, 40 cents. We further find that complainants made shipments from the mines to their respective plants, and paid and bore the charges thereon at the rates herein found unreasonable; that they have been damaged to the extent of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest.

Complainants should comply with rule V of the Rules of Practice.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1433.  
CANCELLATION OF CLASS RATES BETWEEN N. Y., N. H.  
& H. R. R. STATIONS AND LONG ISLAND RAILROAD  
POINTS WITHIN THE BOROUGH OF BROOKLYN.

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*Submitted January 3, 1922. Decided February 11, 1922.*

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Proposed cancellation of joint class rates between New York, New Haven & Hartford stations and Bay Ridge, Bath Junction, Parkville, Vanderveer Park, and East New York, N. Y., found not justified. Suspended schedules ordered canceled and proceeding discontinued.

*W. W. Meyer* for respondents.

*C. L. Addison* and *Donald Wilson* for Long Island Railroad Company.

*Frank E. Grace* for Brooklyn Chamber of Commerce; *James C. Lincoln* for Merchants Association of New York; *G. E. Mace* and *W. H. Chandler* for Boston Chamber of Commerce and New England Traffic League; *P. W. Moore* for Long Island City Chamber of Commerce, protestants; and *G. F. Covert*, *John A. Duncan*, *Henry S. Herold*, *J. E. Masterson*, *Llewellyn Moore*, *William S. Pitts*, *R. D. Simons*, *W. D. Smith*, *E. J. Tarot*, and *Samuel Weingarten* for other protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective November 1, 1921, respondents propose to cancel the joint class rates between stations on the New York, New Haven & Hartford, hereinafter called the New Haven, and Bay Ridge, Bath Junction, Parkville, Vanderveer Park, and East New York, N. Y., stations on the Long Island in the borough of Brooklyn, hereinafter referred to as the intermediate Long Island stations, which would result in the application of higher combination rates. Upon protests of the chambers of commerce of Brooklyn, N. Y., and Boston, Mass., and others, operation of the schedules was suspended until March 31, 1922.

Prior to the completion of the New York Connecting, traffic between New England and points on the Pennsylvania west of the Hudson River was interchanged by car-float service between Oak Point, N. Y., and Greenville, N. J. The New York Connecting, owned jointly by the New Haven and the Pennsylvania, is about



8.2 miles in length and was constructed at a cost stated by respondents as approximately \$35,000,000. It extends from a point of connection with the New Haven near Harlem River, N. Y., to a connection with the Long Island at Fresh Pond Junction, N. Y., bridging Hell Gate. Upon its completion in April, 1918, a new route was opened over this road, the Long Island to Bay Ridge, and car floats to Greenville, which has since become the preferred route for traffic interchanged between the New Haven and the Pennsylvania.

Traffic between New England and Long Island stations which had previously moved by car float from Oak Point to Long Island City, N. Y., also moved over this route, the applicable rates being the combinations of rates to and from Fresh Pond Junction. On some classes these combinations to and from points south of Fresh Pond Junction, to and including Bay Ridge, were higher than the rates over that route between New England and Newark, N. J., Philadelphia, Pa., Baltimore, Md., and other points west of the Hudson. Application for relief from the long-and-short-haul provision of the act having been denied, joint rates, which did not exceed the rates between New England and Newark and other points west of the Hudson, were published, effective October 1, 1921, to and from these stations. Subsequently the New Haven provided that traffic which moved between New England and points west of the Hudson on rates lower than the former combinations from and to the intermediate Long Island stations should be routed via Oak Point and car floats to New Jersey terminals. Having thus eliminated the possibility of fourth section departures if the higher combination rates were restored, respondents filed the schedules under suspension. If they become effective the maximum and minimum increases, in cents per 100 pounds, in rates between stations in Massachusetts, Connecticut, and Rhode Island and the intermediate Long Island stations for distances ranging from 58 to 242 miles, will be—

Classes-----	1	2	3	4
Maximum increase-----	14	11	10	7
Minimum increase-----	7	6	2.5	5

The fifth-class rates would be increased from 0.5 cent to 1.5 cents in a few instances, but there would be no increase in the sixth-class rates.

Although the preferred routing between New England and points on the Pennsylvania west of the Hudson has been over the New York Connecting, respondents' new routing contemplates that, between Boston, Mass., and Baltimore, for example, classes 1, 2, and 4 shall move via Oak Point and car float to New Jersey terminals and classes 3, 5, and 6 over either that route or the New York Connect-

ing. Unless such segregation of traffic were made, the longer route via Oak Point would have to be used on all traffic and the preferred routing would be practically abandoned. Such routing arrangements appear to be complicated, and calculated to reduce efficiency in loading and handling freight.

Respondents claim that the rate adjustment between New England and points west of the Hudson is on too low a basis and that they should not be required to observe such rates as maxima at intermediate Long Island points. The present joint class rates from Boston to Bay Ridge, 226 miles, are the same as to Newark, 238 miles, and Philadelphia, 311 miles, except the six-class rates, which are 3 cents lower to Bay Ridge. If these joint rates are canceled, the combination rates between Bay Ridge and Boston will not only be materially in excess of the rates between Boston and Newark, except on sixth class, but will also exceed on the first four classes the rates between Boston and Baltimore, 429 miles.

Generally the intermediate Long Island stations have been grouped with 16 other Long Island stations in rates to and from New England. The application of joint rates to and from five of these stations and not to and from the others has resulted in an application for joint rates to and from the latter stations. Respondents have under consideration and expect to publish within a short time a joint class tariff for application to and from all Long Island stations. On just what basis such joint rates will be published does not appear. It was stated that the joint rates to the intermediate Long Island stations will be lower than the combination rates, but that the rates to Newark and points west of the Hudson will not be observed as maxima.

During October, 1921, 1,241,358 pounds of freight moved to and from the intermediate Long Island stations on class rates and were interchanged between the Long Island and the New Haven. This was approximately 3.6 per cent of the total tonnage interchanged between those carriers, and of this 3.6 per cent only about 9 per cent would have been affected if the suspended schedules had been in effect. A depot of the quartermaster general in South Brooklyn, N. Y., adjacent to the Bush Terminal, is served by sidetrack connection with the Long Island at Bay Ridge, about half a mile distant, and the bulk of its traffic is forwarded that way. About 100 tons a month are shipped to and from this depot from and to New England points, nearly all at first-class rates. The rates on a large part of this traffic would be increased 14 cents per 100 pounds by the proposed cancellations.

We find that the suspended schedules have not been justified. An order requiring their cancellation and discontinuing this proceeding

No. 11703.

IN THE MATTER OF INTRASTATE RATES WITHIN THE  
STATE OF ILLINOIS.

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*Submitted April 27, 1921. Decided January 14, 1922.*

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Intrastate rates and charges of electric railroads and of certain short-line steam railroads in Illinois found to be unduly preferential of intrastate traffic and shippers and localities within the state, unduly prejudicial to interstate traffic and shippers and localities outside the state, and to discriminate unjustly against interstate commerce. Rates and charges prescribed which will remove such preference, prejudice, and discrimination. Previous reports, 59 I. C. C., 350, and 60 I. C. C., 92.

*R. V. Fletcher* for trunk-line and various short-line carriers.

*C. W. Galligan* for short-line carriers.

*Morton T. Culver* for attorney general of Illinois and *Harry M. Slater* for Public Utilities Commission of Illinois.

*L. M. Greenlaw* and *J. T. Morrison* for Pullman Railroad Company; *Carter, Collins & Jones* for Missouri-Illinois Railroad Company; *E. C. Kramer* for East St. Louis Connecting Railway Company, St. Louis & Ohio River Railroad, East St. Louis & Suburban Railway Company, and St. Louis & Belleville Electric Railway Company; *M. W. Schaeffer* for East St. Louis & Suburban Railway Company and St. Louis & Belleville Electric Railway Company; and *James A. Knowlton* and *Henry I. Green* for the following carriers composing the Illinois Traction System, Incorporated: Danville, Urbana & Champaign Railway Company, Illinois Central Traction Company, St. Louis, Springfield & Peoria Railroad Company, Bloomington, Decatur & Champaign Railroad Company, St. Louis Electric Terminal Railway Company, and Chicago, Ottawa & Peoria Railway Company.

*Stanley B. Houck* and *W. A. Holley* for Central Illinois Coal Traffic Bureau; *R. Abram* for Brotherhood of Railroad Trainmen; *D. McCarthy* for Illinois state legislative board, Brotherhood of Locomotive Firemen and Enginemen; *R. W. Ropiequet* for East Side Manufacturers' Association and Perry County Coal Corporation; *C. P. Hoy* for Fifth and Ninth Districts Coal Bureau; *J. S. Brown* for Board of Trade, Chicago, Ill.; *Borders, Walter, Burchmore & Collin* for Chicago & Calumet River Railroad Company and

66 I. C. C.

East St. Louis Junction Railway Company; and *J. H. Kane* for Silica Sand Producers Association.

REPORT OF THE COMMISSION ON SUPPLEMENTAL HEARING.

McCHORD, *Chairman*:

In previous reports in this case we required various carriers to make increases in standard passenger fares, 59 I. C. C., 350, and in charges for freight service and for the transportation of milk and cream, 60 I. C. C., 92, intrastate in Illinois, corresponding with those authorized by us for the eastern group, which includes the Illinois district, in *Increased Rates, 1920*, 58 I. C. C., 220, and *Authority to Increase Rates*, 58 I. C. C., 302, hereinafter referred to as Ex Parte 74, in order to remove undue preference of and advantage to intrastate passengers and shippers, undue prejudice and disadvantage to interstate passengers and shippers, and unjust discrimination against interstate commerce, found to exist as the result of the failure of the Illinois Public Utilities Commission to grant increases equivalent to those authorized by us in Ex Parte 74. In this proceeding, upon further hearing, we have to consider the propriety of intrastate rates and charges of various electric and short-line steam carriers in Illinois which were not included in the orders heretofore entered.

This report will deal only with the intrastate rates and charges for freight services, including the transportation of milk and cream. Passenger fares of respondents will be dealt with in a subsequent report. Except as noted, rates will be stated in cents per 100 pounds. Rates on coal will be stated in amounts per ton of 2,000 pounds, and switching rates in amounts per car. The attitude of the Illinois Public Utilities Commission is the same as in the previous proceedings.

The Bloomington, Decatur & Champaign; Danville, Urbana & Champaign; Illinois Central Traction; St. Louis Electric Terminal; St. Louis, Springfield & Peoria; and the Chicago, Ottawa & Peoria railroads compose the Illinois Traction System. The first five named are physically connected and form one continuous line serving, among other points, Peoria, Bloomington, Springfield, Decatur, Danville, East St. Louis, Ill., and St. Louis, Mo. The Chicago, Ottawa & Peoria is not physically connected with the other five divisions, but extends from Joliet, Ill., to Ottawa, Streator, and Princeton, Ill., and other points. The lines of the Illinois Traction System operate freight and passenger trains by electric power over 530 miles of main-line track. They handle baggage, express, mail, and all classes of freight, including milk and cream. The volume

of grain and coal carried by these lines compares favorably with that of any railroad in the state. They compete with the steam carriers and participate in joint rates on intrastate and interstate traffic. Approximately one-third of their entire revenue is derived from freight traffic. Approximately 65 per cent of their freight revenue is derived from interstate traffic. For the year 1920 a financial statement shows that the operating expenses, taxes, and fixed charges, including dividends on preferred stock, for the entire system exceeded the gross revenue by \$135,000.

Prior to August 26, 1920, and for a considerable period thereafter, the rates and charges of these carriers were generally the same as those of the steam railroads. The same is true now with respect to interstate rates, but as to intrastate rates the parity has been disrupted as the result of the steam carriers increasing their rates to the interstate basis pursuant to our previous order in this case, 60 I. C. C., 92. Although St. Louis, Mo., is the only interstate point reached directly by these carriers, they participate in joint through rates to such points as Hannibal, Mo., and Quincy, Ill. Rates in effect August 25, 1920, to St. Louis and Hannibal were increased 40 per cent, as authorized by us in Ex Parte 74, while the rates to East St. Louis and Quincy were increased only 35 per cent, as authorized by the Illinois Public Utilities Commission. Other points near the borders of the state of Illinois to which joint rates apply are Davenport, Iowa, Rock Island and Moline, Ill., Gary, Ind., and Chicago, Ill. In our previous reports we discussed the disadvantage put upon these border points in Missouri, Iowa, and Indiana, as the result of their being compelled to pay relatively greater increases than those across the state line in Illinois.

Under the present adjustment, joint rates of the Illinois Traction System lines in connection with the steam roads are lower in many instances than the rates maintained by the steam roads for a one-line haul from and to the same points. The first-class rate between Chicago and East St. Louis is 88 cents over the steam roads, while the first-class rate between the same points in connection with the Illinois Traction lines is 86 cents. Similar differences are found in the commodity rates. The rate on coal from Danville, Ill., to Chicago over the single line of the Chicago & Eastern Illinois is \$1.72. The rate from mines on the Illinois Traction System in the Danville district to Chicago over the two-line route in connection with the Chicago & Eastern Illinois is \$1.565.

There are a number of coal mines on the Illinois Traction lines which are served by steam roads named in our previous orders in this proceeding. For example, at Worden, Ill., there is a mine in group 2, or the inner group, served by the Illinois Traction lines

and also by the Wabash. The rate over the Wabash to Granite City and East St. Louis, Ill., is \$1.015, and the rate over the Illinois Traction lines from and to the same points is 96.5 cents. These rates formerly were on the same basis.

Where switching or other charges are absorbed by the Illinois Traction lines, the amount of absorption has been increased 40 per cent, while the through rates have been increased only 35 per cent. These illustrations are typical of various situations resulting from the different increases applied to intrastate and interstate traffic and because of the omission of the Illinois Traction lines from our previous orders in this proceeding.

The East St. Louis, Columbia & Waterloo Railway Company operates an electric line between East St. Louis and Waterloo, Ill., a distance of 22 miles. About 10 per cent of its revenue is derived from freight traffic. It handles all classes of freight, both carload and less than carload, and is a party to joint through rates to St. Louis and East St. Louis. Its rates to interstate points have been increased 40 per cent, while its intrastate rates have been increased only 35 per cent. It is now absorbing charges which have been increased 40 per cent, while it has only been allowed an increase of 35 per cent in its rates between points on its lines and East St. Louis.

The Southern Illinois Railway & Power Company operates an electric line between Carrier Mills and El Dorado, Ill., a distance of 15 miles. It has physical connection with the Illinois Central and switching connections with the Cleveland, Cincinnati, Chicago & St. Louis and the Louisville & Nashville at El Dorado. It participates in joint rates both to intrastate and interstate points on freight in carloads. The rates to interstate points have been increased in accordance with Ex Parte 74 and to intrastate points in accordance with the authority granted by the Illinois commission. This line runs parallel to and competes with the Cleveland, Cincinnati, Chicago & St. Louis between Carrier Mills and El Dorado. The first-class rate between Carrier Mills and El Dorado is 34 cents via the Southern Illinois Railway & Power Company and 35 cents via the Cleveland, Cincinnati, Chicago & St. Louis. The financial statement covering the year 1920 shows that the operating expenses and fixed charges, including dividends on preferred stock, exceeded the income by \$7,785.94.

The St. Louis & Belleville Electric Railway, hereinafter called the Belleville, and the East St. Louis & Suburban Railway, hereinafter called the Suburban, are concerned only with the intrastate rates on coal to East St. Louis and intermediate points. These carriers operate between East St. Louis and coal mines in Illinois in what is known as group 2, or the inner group, and maintain local and joint

through rates from this group to both intrastate and interstate points. Rates to interstate points represent the increases authorized by us in Ex Parte 74, while the rates to intrastate points represent increases authorized by the Illinois commission. The mines served by the Belleville are from 10 to 12 miles, and the mines served by the Suburban about 8 miles, from East St. Louis. During the year 1920 the Belleville transported 493,092 tons of coal, approximately 28 per cent of which moved to East St. Louis and other intrastate points. During the same year the Suburban hauled 896,843 tons, approximately 23 per cent of which moved to East St. Louis and other intrastate points. It is estimated that 10 per cent of the coal moving through the St. Louis gateway was transported by these two lines.

The rate from group-2 mines to East St. Louis over the Belleville and the Suburban is 96.5 cents, while the rate contemporaneously in effect via the Southern Railway, Illinois Central, and six other lines entering East St. Louis and St. Louis is \$1.105. The rate from group 2 to St. Louis over all lines, including the Belleville and the Suburban, is \$1.295. Approximately 80 per cent of the coal used by St. Louis and East St. Louis comes from Illinois mines in group 2. Heretofore the rates from group 2 over the Belleville and the Suburban to East St. Louis and St. Louis have been the same as the rates via other lines. Shipments from at least two of the mines served by the Belleville can be made over the Southern Railway. Other mines served by the Belleville and the Suburban are in close proximity to mines served by carriers named in our former orders in this case.

The Illinois commission points out that there are some mines in group 2 on the Southern Railway which are 30 miles, and some on the Illinois Central which are 61 miles, from St. Louis, while those on the Belleville and on the Suburban are from 8 to 12 miles from St. Louis. This is an attack upon the reasonableness of this group adjustment, which necessarily involves its relation to other groups in Illinois and the entire coal-rate structure in this district. The relationship of these groups was considered and approved in *The Illinois Coal Cases*, 32 I. C. C., 659. A great many parties would have to be heard in any complaint attacking the relationship of these groups, and we do not deem that such an issue is present in this case.

The line of the Missouri-Illinois Railroad Company, a steam carrier, extends from Salem, Ill., to Bismarck, Mo., a distance of 140 miles. At the time of the hearing, March 21, 1921, this carrier had not begun to operate but had filed tariffs with this Commission and with the Illinois commission, effective March 26, 1921. These tariffs contained rates, fares, and charges, both state and interstate,

on the basis applicable on trunk lines in the same territory. The Illinois Southern Railway Company, which formerly owned this line, ceased operations in December, 1919, under a foreclosure proceeding, its revenues not being sufficient to cover operating expenses. Its freight traffic consisted largely of coal moved from Illinois mines to Missouri lead mines, although there was some movement of products of the lead-mining industry, grain and grain products, sandstone, and lime.

The claim of this carrier is anticipatory and is based upon the theory that, while the proposed interstate rates and charges would become effective, in all probability the Illinois authorities would not permit similar rates to be established within Illinois, and as a consequence the alleged unjust discrimination against interstate commerce and the undue preference of intrastate commerce would be created. Testimony introduced at the hearing dealt chiefly with the preexisting rates of the Illinois Southern Railway. Counsel for the Illinois Public Utilities Commission is willing that the testimony taken at this hearing be "considered as evidence taken subsequent to the establishment of the rates." At the time of the hearing this carrier was not engaged in transporting either state or interstate commerce and had no state or interstate rates or charges in effect, and no action had been taken by the Illinois authorities with respect to its intrastate rates, fares, and charges. The interstate rates have since been established. This record affords no basis for a finding as to the rates and charges of this carrier.

The St. Louis & Ohio River Railroad is a line from Belleville, Ill., to East St. Louis, which was completed for operation January 1, 1921. Its tariffs were filed effective on that date, and published rates on coal from mines near Belleville in group 2 to East St. Louis of 96.5 cents and to St. Louis of \$1.295. At the time of the hearing no coal had actually been handled by this line. For that reason no finding is made herein with respect to it.

The East St. Louis Connecting Railway is a subsidiary of the Terminal Railroad Association of St. Louis. It handles both intrastate and interstate freight. It operates along the east side of the Mississippi river, switches cars from industries on its lines to connecting lines, and forms a connecting link between various trunk lines at East St. Louis. The service performed by it is similar in all respects to that performed by the Terminal Railroad Association of St. Louis and the St. Louis Merchant's Bridge Terminal Railway. The latter were included in our former order in this case, 60 I. C. C., 92.

The Manufacturers Junction Railway operates 7 miles of switching tracks in the western part of the Chicago switching district. It was  
66 I. C. C.



found to be a common carrier subject to the interstate commerce act in *Manufacturers Junction Ry. Co.*, 58 I. C. C., 666. It handles all classes of freight, in carloads and less than carloads. About 25 per cent of the carload freight and 10 per cent of the less-than-carload freight is handled in connection with intrastate traffic. Prior to August 26, 1920, it received from its trunk line connections \$3.50 per car of not over 60,000 pounds, plus 10 cents per ton or fraction of a ton in excess thereof, for interchange switching of carload freight; and 5 cents per 100 pounds on less-than-carload freight, regardless of whether it was interstate or intrastate traffic. On August 26, 1920, these charges were increased to \$6 per car, plus 17.5 cents per ton on carload, and 9 cents per 100 pounds on less than carload, on interstate traffic. On intrastate traffic the charges were increased to \$6 per car, plus 17 cents per ton on carload and 8.5 cents per 100 pounds on less than carload. The service performed in each case is identical. The estimated revenue which would accrue to this respondent from the increase of 0.5 cent per ton on carload and 0.5 cent per 100 pounds on less than carload would amount only to about \$1,000 per year. However, there appears to be no reasonable basis for a difference in these rates. Similar adjustments were found to be unduly prejudicial in connection with the larger lines.

The Pullman Railroad is also engaged in switching in the Chicago district. It was found to be a common carrier subject to the interstate commerce act in *Pullman R. R. Co.*, 61 I. C. C., 637. It handles freight in both intrastate and interstate traffic and participates in joint rates with several trunk lines entering Chicago. During the year 1920 it interchanged with its trunk line connections approximately 29,000 loaded cars and 1,620 new freight cars. Of the loaded cars interchanged approximately 30 per cent moved in intrastate traffic, and of the new freight cars 72 per cent moved in intrastate traffic. The switching rate in effect August 25, 1920, was \$2 per car on both interstate and intrastate traffic. After that date the rate became \$2.50 on intrastate and \$3 per car on interstate traffic. The service performed in each instance is identical. On the basis of the number of carloads handled in 1920, the increased revenue which would result from an increase of 50 cents per car in the intrastate rate would amount to only \$1,664.

The Chicago & Calumet River Railroad Company operates 5 miles of switching tracks at Hegewisch, Ill., a suburb of Chicago, and connects with nine trunk lines. It serves industries on its tracks and public team tracks. It was found to be a common carrier in *Chicago & Calumet River R. R. Co.*, 55 I. C. C., 194. It handles no less-than-carload freight, but handles between 20,000 and 25,000 cars per year in switching movements. About 25 per cent of the

traffic is intrastate. It maintains local switching rates which apply between points on its line and as factors of combination rates between points on its line and points in Chicago switching district, where no through rates are in effect. It also publishes proportional rates on traffic destined to and from points outside the Chicago switching district to both interstate in intrastate points. No prayer is made as to proportional rates. Only the local switching rates are involved. For example, on a carload shipment originating on its line destined to Indiana Harbor, Ind., a point within the Chicago switching district, the rate is \$7 per car. If the same shipment were destined to a point within the Chicago switching district in the state of Illinois, the rate would be \$6.50 per car. Prior to August 26, 1920, the switching rate on either movement was \$5 per car. The service performed is identical in each instance. It is estimated that the rate of \$6.50 per car would apply to 1,000 or 1,500 cars, making a difference in revenue of between \$500 and \$750, which would accrue to this respondent if the rates were on a parity.

The Chicago Heights Terminal Transfer Railroad performs a switching service for a number of trunk lines entering Chicago. It operates about 15 miles of main-line tracks and 15 miles of sidings outside the Chicago switching district. It has never been declared a common carrier subject to the interstate commerce act. Its switching charges are absorbed by its trunk line connections in several instances. There is no variation in its charges for a switching service on interstate and intrastate traffic. It performs weighing service for which the charge is 35 cents per car on interstate and 34 cents per car on intrastate traffic. It also publishes reconsigning charges of \$3 on interstate and \$2.50 per car on intrastate traffic. The amount of weighing and reconsigning service performed is not shown, nor is it shown whether these services are performed in connection with any intrastate traffic. No finding will be made with respect to this carrier.

The Chicago River & Indiana Railway Company also performs switching services in the Chicago district, but under adjustments with trunk line carriers the charges of this carrier have been increased on both interstate and state traffic in substantial conformity with Ex Parte 74. This carrier requested that it be included in any order which might be issued requiring the respondents herein to increase their intrastate charges, but stated that no further increases would be made in its charges if it were so included. As its intrastate charges within Illinois now reflect the increases on interstate traffic authorized in Ex Parte 74, no finding with respect to its charges will be made.

An appearance was filed in behalf of the East St. Louis Junction Railway, but as no testimony was introduced concerning its rates and charges no finding is made herein with respect to them.

The record discloses no conditions affecting transportation within Illinois which justify the maintenance of a lower basis of intrastate rates and charges therein than the basis of rates and charges contemporaneously applicable to interstate traffic of respondents for similar services with respect to which findings are made herein. For the reasons already stated, no finding is made concerning the rates and charges of the Missouri-Illinois, the Chicago Heights Terminal Transfer, the St. Louis & Ohio River, the East St. Louis Junction, and the Chicago River & Indiana railroads. Following our previous decision in this case, 60 I. C. C., 92, and related cases, and upon this record, we find that the increases made under Ex Parte 74 by the other respondents hereinbefore named in the rates and charges described for the transportation of interstate freight, including milk and cream, and now in effect, are reasonable; that the failure of said respondents to increase their intrastate rates and charges correspondingly for similar services, including charges for the transportation of milk and cream, within the state of Illinois, has resulted, and will result, in intrastate rates and charges lower than the corresponding interstate rates and charges, in undue preference of shippers and localities in intrastate commerce within the state of Illinois, and subjects shippers and localities in interstate commerce to undue prejudice, and unjustly discriminates against interstate commerce.

We further find that to remove the undue preference and prejudice and unjust discrimination found to exist, increases should be made in these charges corresponding to the increases made in similar charges applicable interstate in the eastern group under Ex Parte 74.

An appropriate order will be entered.

66 I. C. C.

No. 11825.

WILLIAM J. JACKSON, RECEIVER OF THE PROPERTY  
OF CHICAGO & EASTERN ILLINOIS RAILROAD COM-  
PANY,

v.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY.

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*Submitted April 22, 1921. Decided February 9, 1922.*

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Divisions of joint rates on certain traffic moving between stations on the Chicago & Eastern Illinois Railroad and stations on the St. Louis-San Francisco Railway via Chaffee, Mo., found unreasonable and inequitable. Reasonable and equitable divisions prescribed.

*Homer T. Dick* and *K. L. Richmond* for complainant.

*W. F. Evans* and *M. G. Roberts* for defendant.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

McCHORD, *Chairman*:

Exceptions were filed by defendant to the report proposed by the examiner.

William J. Jackson, receiver of the Chicago & Eastern Illinois Railroad Company, hereinafter referred to as the Eastern Illinois, by complaint filed September 24, 1920, alleges that the divisional arrangement between the Eastern Illinois and the St. Louis-San Francisco Railway, hereinafter called the Frisco, on traffic interchanged at Chaffee, Mo., is unjust, unreasonable, and inequitable. We are asked to prescribe just, reasonable, and equitable divisions, and to require adjustment to be made in accordance therewith for the period subsequent to the filing of the complaint. Rates and divisions hereinafter stated are those in effect at the time the complaint was filed.

The Eastern Illinois owns the line of railroad operated by complainant between Chicago, Ill., and Thebes, Ill., a point on the east bank of the Mississippi River about 24 miles north of Cairo, Ill. Its rails extend also from Findlay, Ill., a point on the main line, to St. Louis, Mo.

It is operated between Thebes and Chaffee, which is about 16 miles west of Thebes, under trackage agreements and other contracts with the Illinois Central Railroad, Southern Illinois & Missouri Bridge

Company, St. Louis Southwestern Railroad, hereinafter called the Cotton Belt, and the Frisco. At Chaffee it connects with the main line of the Frisco extending from St. Louis, Mo., to Memphis, Tenn., and with other lines of that carrier serving southeastern Missouri and northeastern Arkansas.

The line of the Eastern Illinois into Thebes was completed and placed in operation in January, 1900. Until 1905 traffic moving via this line was interchanged with the western carriers at Gray's Point, Mo., on the west bank of the Mississippi, by means of a ferry service from Thebes. In December, 1900, the Eastern Illinois, Illinois Central, Cotton Belt, and St. Louis, Iron Mountain & Southern, now a part of the Missouri Pacific Railroad, incorporated the Southern Illinois & Missouri Bridge Company, which constructed a double-track steel bridge across the Mississippi River at Thebes. The bridge cost \$3,250,496 and was placed in operation in April, 1905. The agreement between the bridge company and the tenant lines contemplated the payment by the latter of all charges and tolls for service across the bridge and equal proportions of any deficit from operation. Under these agreements and contracts Illmo, Mo., where the bridge tracks connect with the Cotton Belt, became the point of interchange between the Eastern Illinois and the western carriers.

In January, 1905, prior to the completion of the Thebes bridge, the Frisco entered into a contract with the Cotton Belt whereby it obtained the right to operate its trains over the rails of the latter between Rockview, Mo., about 2 miles north of Chaffee, and Illmo, a distance of 7.54 miles. The Frisco, having previously in 1902 acquired control of the Eastern Illinois by stock ownership, assigned this contract to the Eastern Illinois, and established Chaffee as the point of interchange. In order that the Eastern Illinois might enter Chaffee, another contract was made between that company, the Memphis & Southeastern Railroad, and the Frisco, under which the Eastern Illinois was granted the right to use jointly with the grantors the tracks between Rockview and Chaffee, also the terminal yard, tracks, roundhouse, and other facilities at Chaffee.

From January 1, 1908, until July 1, 1913, the Frisco and the Eastern Illinois divided rates on through traffic on the basis of a mileage prorate with a minimum of 30 per cent to the short line, allowing the Eastern Illinois its actual mileage to or from Chaffee but no specific compensation for bridge service. If bridge tolls were charged, they were deducted before prorating and were added to the proportion accruing to the Frisco lines. On all shipments rebilled at Chaffee the Eastern Illinois received 0.5 cent per 100 pounds on carloads and 2 cents per 100 pounds on less than carloads as compensation for the service between Thebes and Chaffee. On lumber and forest

products northbound routed via Chaffee and Thebes, where the through rates were made on combination over Thebes, the Frisco received the published local or proportional rates to Thebes less 0.5 cent per 100 pounds, which amount was paid to the Eastern Illinois. It will thus be observed that in all instances the Eastern Illinois was allowed some compensation for the service west of Thebes.

Control of the Eastern Illinois by the Frisco terminated on May 27, 1913, and thereafter the two properties were operated separately. The Eastern Illinois was notified by the Frisco that in the future it would be allowed on through traffic the usual divisions or percentages of rates applicable east and north of Thebes, but would be required to continue to deliver and accept such traffic at Chaffee. On traffic interchanged in both directions between the Frisco at Chaffee and connections of the Eastern Illinois at Thebes, a division of 10 cents per ton, equivalent to 0.5 cent per 100 pounds, was offered for the intermediate service of the Eastern Illinois. The proposals submitted by the Frisco were accepted by the Eastern Illinois under the threat of diversion of the traffic to St. Louis. It was also advised that unless it consented to these proposals it could not expect to share in the traffic delivered by the Frisco at St. Louis. The Eastern Illinois was then in no position to forego the revenue it derived from tonnage moving over Frisco rails, via either St. Louis or Chaffee.

The revised divisions, with some modifications, have been in effect since July 1, 1913, except during the period of federal control. After the termination of federal control the Eastern Illinois notified the Frisco that it would discontinue its service between Thebes and Chaffee. Tariffs accordingly were filed canceling all joint rates applying by way of the Eastern Illinois to, from, or via Thebes. The practical effect of those tariffs would have been to close the Thebes gateway, and upon protest they were suspended. The suspension was subsequently made permanent by order in *Abandonment of Service by C. & E. I. R. R.*, 59 I. C. C., 49. It was stated in that case that the Eastern Illinois and Frisco would be expected to make an earnest effort to agree concerning divisions via the Thebes-Chaffee gateway, but in the event of failure to agree the matter could be brought to the attention of the Commission in another proceeding. No agreement was reached and this complaint was then brought.

The Eastern Illinois contends that rates on traffic moving between points east and west of the Mississippi River are constructed so as to break at the river, or at Thebes, and that by its service west of the river it becomes in effect a short western carrier and therefore entitled to remuneration for such service separate and dis-

tinct from the rates and revenues it receives for its services east and north of Thebes.

It states that under present operating costs it can no longer afford to participate in this traffic unless some allowance is made for its services over the bridge and the leased properties. The record shows that the cost to the Eastern Illinois for performing the service between Thebes and Chaffee, exclusive of train operation and general expenses incident thereto, amounted in July, 1920, to \$12,023.48, divided as follows: \$327.45 to the Illinois Central for use of a connecting track at Thebes, \$1,960.36 to the bridge company, \$897.26 to the Cotton Belt for trackage between Illmo and Rockview, and \$8,838.41 to the Frisco for maintenance and operation of the line between Rockview and Chaffee, care of equipment at Chaffee, rental of joint facilities, taxes, and coal furnished locomotives.

Complainant suggests that divisions fair to both carriers could be determined by one of the following methods: (a) By allowing the Eastern Illinois its division east of Thebes and adding thereto a bridge toll plus a mileage prorate of the revenue accruing west of Thebes with a minimum of 25 per cent to the short line; or (b) by adding to the proportion east of Thebes an amount based on a mileage prorate of the revenue west of Thebes, allowing a constructive mileage for the bridge. In computing this constructive mileage the assessed values of the bridge in Illinois and Missouri for the year 1919 were divided by the assessed values of the adjacent main lines of the Eastern Illinois and Cotton Belt, which produced 111.65 miles as the equivalent for the bridge. To this figure was added the actual mileage over the leased lines, resulting in a constructive mileage between Thebes and Chaffee of 122.41 miles. By either of these methods the Eastern Illinois would receive in almost all cases not less than 25 per cent of the earnings west of Thebes in addition to its revenue east of Thebes.

A common method of dividing rates on traffic crossing the Mississippi and Ohio rivers is to allow the carriers east and north of the rivers their local or proportional rates, or the established percentages of through rates, to or from the crossings, plus an allowance for bridge service where they perform that service. These allowances or bridge charges vary at the different crossings. A tariff naming bridge and transfer charges at Mississippi and Ohio river crossings, effective February 15, 1918, shows that, generally speaking, the charges on class traffic crossing the Mississippi River north of St. Louis were at that time 5 cents per 100 pounds on the first three classes and less than 5 cents per 100 pounds on the remaining classes. The charges for crossing the bridge at Louisiana, Mo., over which

the Chicago & Alton Railroad operates, was 2 cents for carload traffic and 2.5 cents for less-than-carload traffic. At Thebes and Cairo the charge was 2 cents per 100 pounds on both carload and less-than-carload traffic; at Evansville, Ind., and Louisville, Ky., 1 cent on carload traffic and 2 cents on less-than-carload traffic; and at Memphis, 3 cents on the first three classes and 2 cents and 1.5 cents on the lower classes.

The Frisco operates across the bridge at Memphis and receives an allowance out of the through rates equal to the cost of the bridge service, except, possibly, where it elects to meet the competition of more direct lines. The transfer charges at Memphis, as published by the Kansas City & Memphis Railway & Bridge Company, are 5.5 cents per 100 pounds on less-than-carload traffic, and on carload traffic, 5.5 cents per 100 pounds on the first three classes, 3.5 cents on the next three classes, and 2.5 cents on the remaining classes. The charge on lumber and coal is 2 cents per 100 pounds. The Illinois Central publishes a charge of 2.5 cents on all traffic crossing the bridge at Cairo. At most of the river crossings specific bridge charges are applicable on particular commodities moving in carloads.

The divisions accruing to the Eastern Illinois out of rates on traffic interchanged with the Frisco will now be considered. The divisions of rates on specific commodities will be separately stated.

With some exceptions rates on traffic moving between Frisco stations in southeastern Missouri and northeastern Arkansas, and Eastern Illinois stations, except Chicago and points taking the same rates, are divided on a mileage prorate to and from Thebes, with a minimum of 25 per cent to the short line. This basis also is employed in dividing rates on southbound traffic, and on some northbound traffic, between Chicago and other stations on the Eastern Illinois and Memphis and points east thereof. On Memphis traffic the Eastern Illinois and Frisco meet the competition of the Illinois Central, the direct line, and in the movement the Mississippi River is crossed twice, once by the Eastern Illinois and once by the Frisco. One bridge expense therefore offsets the other. Defendant contends that under such circumstances a mileage prorate is fair and reasonable. It allows the Eastern Illinois on first-class traffic from Chicago to Memphis 21.7 cents more than the proportional rate to Thebes.

Divisions of rates are frequently made on a mileage prorate with a minimum division to the short line when the movement to and from the point of interchange is in the same general territory under approximately similar rate adjustments, and when no unusual services are performed. Here, however, the level of rates in the territory served by the Frisco is higher than the level of rates in the territory



east of the Mississippi River through which the Eastern Illinois operates. There is also a wide difference in the traffic density. During the year ended December 31, 1919, the traffic density on the Eastern Illinois was 1,939,894 ton-miles per mile of road as compared with 768,571 ton-miles on the Frisco. A mileage prorate, considering the line of the Eastern Illinois east and west of Thebes as a unit, would appear to be distinctly favorable to that carrier, even though based on the mileages to and from Thebes.

In addition to the movement from points on the Eastern Illinois to stations on the Frisco south of Chaffee there is some local movement to and from Chaffee. Although the Frisco performs no service in connection with movements of this character, except possibly a switching service, the expense of which is borne in part by the Eastern Illinois, it demands 50 per cent of the revenue west of Thebes. Coal is an exception. The Frisco contends that on traffic from Chicago to Chaffee it is entitled to a division of the revenue west of Thebes because it is in a position to solicit the movement via the St. Louis gateway and because it delivers a large tonnage eastbound to the Eastern Illinois at Chaffee which it could haul to St. Louis. Inasmuch as Chaffee is a station on the Eastern Illinois made such by the trackage agreement with the Frisco, the latter can not properly claim any proportion of the revenue on local traffic moving between that point and other stations on the Eastern Illinois.

The following table shows the divisions of first-class rates on less-than-carload traffic moving from Chicago via Thebes to representative points on the Frisco, and the amount that the Eastern Illinois receives in excess of the proportional rate to Thebes. The proportional rate to Thebes, applicable on traffic to points to which no through rates are published, is 73.5 cents first class. The first-class local rates from Chicago to Thebes and Chaffee are 98.5 cents and \$1.45, respectively, a spread of 46.5 cents. The distance from Chicago to Thebes is 378 miles and to Chaffee 394 miles.

From Chicago to—	Distance beyond Chaffee.	First-class rate.	Division.		Revenue.		C. & E. I. excess over proportional rate to Thebes.
			C. & E. I.	Frisco.	C. & E. I.	Frisco.	
	Miles.	Cents.	Per cent.	Per cent.	Cents.	Cents.	Cents.
Slakeston, Mo.....	22	154.5	50.2	49.8	77.5	77	4
Kennett, Mo.....	79	183	43	57	78.7	104.3	5.2
Poplar Bluff, Mo.....	61	162	48.4	51.6	78	84	4.5
Hoxie, Ark.....	125	174	41	59	71.3	102.7	12.2
Jonesboro, Ark.....	144	191	41	59	78.3	112.7	4.8
Turrell, Ark.....	140	196	41	59	80.4	115.6	6.9
Blytheville, Ark.....	94	177.5	41	59	72.8	104.7	1.7
Osceola, Ark.....	110	184.5	47.3	52.7	87.3	97.2	13.8
Memphis, Tenn.....	162	142	67	33	95.2	46.8	21.7

<sup>1</sup> Under proportional rate.

A mileage prorate to and from Chaffee, with a minimum of 25 per cent to the short line, would allow the Eastern Illinois 75 per cent of the revenue to points within 130 miles west of Chaffee. The Eastern Illinois' maximum division to any of the points shown in the table except Memphis is 50.2 per cent, ranging down to 41 per cent. The present basis was adopted merely for simplicity in accounting and with no intention on the part of the Frisco of allowing the Eastern Illinois compensation for the service across the bridge and west of Illmo. That bridge charges should be considered, however, is shown by reference to supplements, issued by the Frisco, to the division sheet carrying these per cents, which provided originally for a deduction of 5 cents per 100 pounds for river transfer, and subsequently for actual Mississippi River transfer charges.

#### COAL

Tonnage considered, coal is the most important commodity moving southbound through the Thebes-Chaffee gateway. This coal moves from southern Illinois mines on the Eastern Illinois, Illinois Central, and other carriers to points in southeastern Missouri and northeastern Arkansas, where it competes with coal originating on the Frisco in the Alabama field. In April, 1920, 242 cars moved from Eastern Illinois mines to stations on the Frisco and 4 cars to points on connections of the Frisco. During the same month 451 cars moved from Illinois Central mines to Frisco stations via Gale (Thebes) and the Eastern Illinois and 14 cars to points on connections. The movement from Alabama mines is not stated.

Prior to September 23, 1915, the divisions of through rates on coal originating on the Eastern Illinois destined to consuming points on the Frisco were based on the former system's percentages, and averaged 57.68 cents per ton east of Chaffee. On that date the division allowed the Eastern Illinois was reduced to 52 cents to offset the increased cost to the Frisco of fuel coal consumed at Chaffee resulting from increases in coal rates made effective east of the Mississippi River about that time. This division was increased to 70 cents a ton following general order No. 28 of the Director General of Railroads and to 94.5 cents following the general increases in rates in 1920.

The present divisions of joint rates on coal from mines on the Eastern Illinois in southern Illinois to a few representative points on the Frisco are shown in the following table, together with divisions figured on an actual mileage prorate to and from Chaffee and on a mileage prorate using the constructive mileage from Thebes to Chaffee proposed by complainant, allowing 25 per cent to the short line.

To—	Distance beyond Chaffee.	Rates per ton.	Present divisions.		Divisions based on mileage prorate. <sup>1</sup>		Divisions based on constructive mile- age. <sup>2</sup>	
			C. & E. I.	Frisco.	C. & E. I.	Frisco.	C. & E. I.	Frisco.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Sikeston, Mo. ....	22	236.5	94.5	142	177.4	59.1	177.4	59.1
Kennett, Mo. ....	79	283.5	94.5	189	146.9	136.6	200.5	55
Poplar Bluff, Mo. ....	61	277	94.5	182.5	161.3	115.7	207.8	59.2
Hoxie, Ark. ....	125	337.5	94.5	243	136.6	200.9	204	133.5
Turrell, Ark. ....	140	337.5	94.5	243	127.5	210	194.8	142.7
Osceola, Ark. ....	110	337.5	94.5	243	147.1	190.4	214.2	123.3

<sup>1</sup> Average distance to Chaffee, 85 miles.<sup>2</sup> Constructive distance to Chaffee, 191 miles.

The present rate on coal from southern Illinois mines to Chaffee is \$1.485, and to Thebes 15 cents less. The divisions proposed by complainant, based on constructive mileage, are materially in excess of the local rate to Chaffee. In some instances, to points within a relatively short distance of Chaffee, the local rate would be exceeded under a mileage prorate using actual distances. Complainant has never asked the Frisco to accord divisions as high as would be obtained by the use of a constructive mileage, but contends that considering the difference in the services performed such divisions would be reasonable. Upon the present basis of divisions the Eastern Illinois receives on coal approximately 16.8 cents a ton more when delivery is made at Chaffee than it earns on coal delivered to the Cotton Belt at Thebes.

Reference is made by defendant to an average division of 71.3 cents a ton accorded by it to the Missouri Pacific, prior to August 26, 1920, on southern Illinois coal hauled over the Thebes bridge and delivered by that carrier at Delta, Mo., a junction point west of the river about midway between Chaffee and Cape Girardeau, Mo. Under the present rates the Missouri Pacific earns an average of 93.8 cents a ton to Delta.

As before stated, there is a considerable movement of coal from Illinois Central mines to stations on the Frisco. The average revenue allowed the Illinois Central to Gale (Thebes) on southern Illinois coal destined to Frisco stations is 92.3 cents a ton, which is 2.2 cents less than the division allowed the Eastern Illinois to Chaffee. For its intermediate service from Gale to Chaffee, the Eastern Illinois earns on this traffic 16.2 cents a ton, which it claims is inadequate. No consideration, however, can be given in this proceeding to the matter of divisions of rates from points on the line of the Illinois Central, as that carrier is not a party herein.

The division of 94.5 cents yields the Eastern Illinois 1.11 cents per ton-mile as contrasted with the Frisco's ton-mile earnings of 6.45 cents to Sikeston, 2.39 cents to Kennett, 1.73 cents to Turrell, and

2.21 cents to Osceola. The record discloses no unusual conditions over the Frisco portion of the through haul which would justify so great a disparity. The Eastern Illinois originates and assembles the coal, performs the switching at the mines, all of which are off the main line, some from 3 to 4 miles distant, furnishes the equipment, and operates over the Thebes bridge and over leased lines in effecting delivery at Chaffee. When measured by the difference in service performed, the Eastern Illinois' division is too low.

#### LUMBER AND FOREST PRODUCTS.

The bulk of the traffic moving northbound through the Thebes-Chaffee gateway consists of lumber and forest products. Prior to July 1, 1913, the Eastern Illinois was allowed on lumber 0.5 cent per 100 pounds in addition to the division north of Thebes to compensate it for the service over the bridge. A rate of 4 cents was found reasonable for the local movement from Chaffee to Thebes in *Disher Hoop & Lumber Co. v. St. L. & S. F. R. R. Co.*, 26 I. C. C., 488, and *Hoops from Chaffee, Mo.*, 38 I. C. C., 482. For the six months immediately preceding July 1, 1913, the earnings of the Eastern Illinois from Chaffee to Thebes on lumber received from the Frisco were estimated to have been \$52,215. The estimated earnings from the same source during the calendar year 1912 were \$96,913. After July 1, 1913, the allowance was discontinued, resulting in an estimated loss in its lumber revenue up to July 1, 1920, excluding the period of federal control, of \$285,858. The movement of lumber over this route is less now than in former years.

Until June 25, 1918, the rates on lumber from southwestern producing territory to points east of the Mississippi River were made on combination of the rates to and from Thebes and were divided, after the separation of the companies, by allowing the Eastern Illinois the local or proportional rates applying north and east of Thebes. The Frisco retained the full proportion south of Thebes. The rate adjustment has been disturbed by general order No. 28 of the Director General and by the general rate increases of 1920, so that, as a rule, the rates are no longer equal to the combination. Effective March 1, 1920, arrangements were made to divide the increased rates on lumber moving from the southeast to points north of the Ohio River on the basis of a revenue prorate, using as factors the components applying on June 24, 1918. No basis has been agreed upon for dividing rates from the southwest to Illinois points.

Poplar Bluff, Mo., is a representative point on the Frisco from which lumber is shipped. The present rate on lumber from that point to Chicago is 33 cents per 100 pounds, which happens to be the same as

the combination of 13.5 cents to Thebes and 19.5 cents beyond. On lumber from Poplar Bluff to Chicago the Eastern Illinois would therefore earn 19.5 cents, or approximately 1 cent per ton-mile, and the Frisco would earn 13.5 cents or 4.4 cents per ton-mile. If the Frisco handled the traffic to St. Louis it would earn 19 cents, which is equivalent to 1.95 cents per ton-mile for the distance of 195 miles, but would be required to assume a bridge charge. The present rate on lumber from Nettleton, Ark., 153 miles from Chaffee, to Chicago is 34.5 cents, which divided on a revenue prorate, would allow the Eastern Illinois 18.5 cents and the Frisco 16 cents. The ton-mile earnings under these divisions are 9.4 mills and 2.1 cents, respectively. Based on an allowance of 2 cents per 100 pounds for service from Chaffee across the bridge to Thebes, the earnings per ton-mile on lumber from the points named would be from Poplar Bluff, Eastern Illinois 1.09 cents, Frisco 3.77 cents; and from Nettleton, Eastern Illinois 1.04 cents, Frisco 1.83 cents.

Defendant contends that the present divisions allowed the Eastern Illinois on lumber are reasonable and just, particularly in view of the fact that the latter is satisfied to shrink its revenue east of the river 3.5 cents per 100 pounds in order to participate in lumber traffic moving north of Cairo over the Illinois Central and Mobile & Ohio railroads. The Eastern Illinois connects with the Illinois Central at Olive Branch, Ill., and with the Mobile & Ohio at Tamms, Ill., junction points a few miles north of Cairo, and allows those carriers 3.5 cents out of the proportions accruing north of the Ohio River. The record indicates that there is little or no movement of lumber over these routes.

#### OTHER COMMODITIES.

The principal traffic moving northbound through Thebes, aside from lumber, consists of cement and miscellaneous commodities from Cape Girardeau; hides, scrap, and merchandise from Memphis; lime from Fremont, Mo.; cotton and cottonseed products from Memphis and other points; and pig iron from the Birmingham, Ala., district. Cement moves from Cape Girardeau to points in southern Illinois under rates and divisions based on those prescribed in *Cape Girardeau Portland Cement Co. v. St. L. & S. F. R. R. Co.*, 35 I. C. C., 109, and 47 I. C. C., 204, which were 2 cents to the Frisco for the movement from Cape Girardeau to Chaffee, 1 cent to the Eastern Illinois for service across the Thebes bridge, and the balance to the lines east of the river. Rates on miscellaneous commodities from Cape Girardeau are divided on a mileage prorate allowing 25 per cent to the short line. Rates on hides, scrap, and mer-

chandise from Memphis and on lime from Fremont are also divided on a mileage prorate.

A different basis has been established for dividing rates on cotton and cottonseed products and on pig iron. The rates on such traffic are divided by allowing the Eastern Illinois the rates or divisions applicable north of Cairo on similar traffic. For illustration, on pig iron from Birmingham to Chicago the lines north of Cairo and Thebes receive \$2.46 per gross ton out of the through rate of \$6.65. This is equivalent to 37 per cent to the Eastern Illinois, whereas a mileage prorate would yield 48.8 per cent. Traffic originating at Memphis and points on the Frisco east thereof, moving over the Thebes-Chaffee route, necessarily must cross the Mississippi River at Memphis and at Thebes and the expense over one bridge may therefore properly be held to offset the expense at the other. There are several routes over which this traffic could move in which the Eastern Illinois would not participate.

The Frisco justifies its retention of the balance of the revenue south of Thebes on such commodities as lumber, cotton, cottonseed products, and pig iron, on the ground that this is highly competitive traffic which it could move through to St. Louis and thereby obtain its maximum haul and maximum revenue. Moreover, it would obtain a larger volume of traffic to offer eastern connections at that point in exchange for competitive westbound traffic. The Eastern Illinois can get little traffic at Thebes, because lines entering Thebes from the west have their own rails into East St. Louis and to other junctions north of Thebes and insist on their long haul. When the relative advantages and disadvantages are considered, the claim of the Eastern Illinois for divisions on the basis of a mileage prorate of the revenue west of the river, with a minimum of 25 per cent to the short line, or its alternative of a constructive mileage for the bridge, can not be accepted as a proper basis.

Service via Thebes and Chaffee is, however, advantageous to the Frisco. This gateway is favored by shippers because, in many instances, it affords a short route and by routing traffic through it, movements through the large terminals at St. Louis and East St. Louis are avoided. The Eastern Illinois delivers competitive traffic to the Frisco at Chaffee in return for the traffic received at Chaffee, to the mutual advantage of both carriers. It should also be remembered that on traffic carried by the Frisco to St. Louis for movement to eastern points a bridge expense must be assumed by the Frisco.

Although divisions of rates can not be based wholly on the financial condition of the respective carriers, it is one of the elements that may properly be considered by us. The evidence shows that

from the date of the receivership of the Eastern Illinois to December 31, 1919, interest accrued and not paid under order of the court amounted to \$14,806,752.87. For the year ended December 31, 1919, the deficit from operation, based on the standard return reported by this Commission, was over \$3,300,000. During the same year the net operating revenue of the Frisco exceeded its standard return by over \$900,000.

#### CONCLUSIONS.

We find that the divisions allowed the Eastern Illinois out of the joint rates on traffic moving between points on the Eastern Illinois via Thebes, Ill., and interstate destinations on the Frisco, interchanged with the latter carrier at Chaffee, Mo., except where such joint rates are divided on the basis of a mileage prorate to and from Thebes or Chaffee, are, and for the future will be unjust, unreasonable, and inequitable. We further find that the just, reasonable, and equitable divisions out of the said joint rates, to which the Eastern Illinois is and for the future will be, entitled are as follows; (a) on traffic which crosses the Mississippi River at Thebes and Memphis, where the expense of the Memphis crossing is borne by the Frisco, the amount ordinarily allowed carriers for the haul north of Cairo or Thebes; (b) on coal from mines on the Eastern Illinois in the southern Illinois district, 92.5 cents per ton to Thebes, and 2 cents per 100 pounds or 40 cents per ton, for services from Thebes to Chaffee; and (c) on other traffic, in addition to the revenue accruing to the Eastern Illinois east and north of Thebes, amounts as follows; on less-than-carload traffic 5.5 cents per 100 pounds; on carload traffic, except lumber, 2.5 cents per 100 pounds; and on lumber 2 cents per 100 pounds.

We further find that the Eastern Illinois is entitled to and should receive the entire line-haul revenue on its local traffic to and from Chaffee.

With respect to joint rates which have been established pursuant to findings or orders of this Commission, including those established pursuant to the authority granted in *Increased Rates, 1920*, 58 I. C. C. 220, we find that the divisions thereof received by the Eastern Illinois should be adjusted upon the bases above found just, reasonable, and equitable, effective as of September 24, 1920.

An appropriate order will be entered.

No. 8525.

## LA CROSSE SHIPPERS' ASSOCIATION

v.

## ANN ARBOR RAILROAD COMPANY ET AL.

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Submitted October 22, 1921. Decided February 6, 1922.

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Finding in *The Wisconsin Rate Cases*, 44 I. C. C., 602, as to class rates from La Crosse, Wis., to points in New England, trunk line, and central territories adhered to on further hearing.

*S. J. Bolton* and *W. W. West* for complainant.

*O. W. Dynes* and *J. N. Davis* for Chicago, Milwaukee & St. Paul Railway Company; *Kenneth F. Burgess* for Chicago, Burlington & Quincy Railroad Company; *D. P. Connell* for trunk line and central territory carriers; and *Robert H. Widdicombe* for Chicago & North Western Railway Company.

## REPORT OF THE COMMISSION ON FURTHER HEARING.

MEYER, *Commissioner*:

The issues in this case were made the subject of a proposed report. No formal exceptions were filed, but defendants upon oral argument stated their exceptions and the grounds therefor.

In the original report in this and related cases, *The Wisconsin Rate Cases*, 44 I. C. C., 602, decided April 25, 1917, we prescribed joint class rates for application between New York and La Crosse, Wis., 145 per cent of the Chicago-New York and New York-Chicago rates, and required that rates between trunk line and New England points and La Crosse should bear the same relation to the New York-La Crosse rates that they had theretofore borne to the old rates. Increases made in the rates to Chicago following *The Fifteen Per Cent Case*, 45 I. C. C., 303, resulted in rates to La Crosse the same as applied to St. Paul, Minn. We stated that defendants would be expected to adjust the class rates between La Crosse and points in central territory with proper relation to the rates between the points above referred to. An order was entered requiring the establishment of the rates prescribed, but rates on eastbound traffic have not been put into effect, the case, upon petition of three of the defendants,<sup>1</sup>

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<sup>1</sup> Chicago, Milwaukee & St. Paul Railway Company; Chicago & North Western Railway Company; and Chicago, Burlington & Quincy Railroad Company.



having been reopened for further hearing as to those rates, and the effective date of the order postponed pending final decision. Further hearing was also asked as to westbound rates, but that was denied. Rates are stated per 100 pounds and as of September 17, 1917, and therefore do not include the general increases provided by general order No. 28 of the Director General of Railroads and those authorized by us in 1920.

In *La Crosse Chamber of Commerce v. A. A. R. R. Co.*, 61 I. C. C., 289, decided April 2, 1921, the rates from eastern points to La Crosse were again under consideration, and class rates lower than those to St. Paul were prescribed.

The eastbound rates that were condemned in the original report, with the exception of those to central territory, were based on the locals to and from Chicago, Milwaukee, or other west-bank Lake Michigan ports. Defendants insist that they should have been approved. Their opposition to the rates prescribed is based upon the grounds (1) that the volume of traffic, as well as the merchandise loading per car, is heavier westbound than that eastbound; (2) that the westbound rates to La Crosse were the result of competition of rail-lake-and-rail routes for the heavy merchandise tonnage to St. Paul and Minneapolis, whereas there was little traffic offered eastbound and the boat lines were not active competitors for such traffic for the reason that eastbound there were available attractive cargo lots of grain and grain products; (3) that combination rates apply to trunk line territory from St. Paul, Minneapolis, Eau Claire, Chippewa Falls, and points in the territory naturally related to La Crosse, including points from which the combination basis was approved in our original report, and that to require rates from La Crosse to trunk line territory lower than the combination would, they fear, bring about a demand from such points for like action and also result in the reduction of rates from directly intermediate points, from some of which the combination basis was also approved in our original report; and (4) that the rates from La Crosse would be relatively lower than those from St. Paul and produce lower ton-mile earnings although for a shorter distance.

In March and April, 1917, the Chicago & North Western loaded 111 merchandise cars at Chicago with traffic for La Crosse, the average loading per car being 18,007 pounds. Eastbound from La Crosse there was not enough merchandise to warrant straight cars to Chicago, and accordingly goods for Milwaukee and Chicago were loaded together. For the two months above named there were only 69 such cars from La Crosse, and the average weight was but 15,815 pounds. These figures include traffic destined to and originating at Chicago as well as points east thereof. During the fiscal year ended

June 30, 1917, the Chicago & North Western handled from eastern territory to La Crosse 832,000 pounds of less-than-carload traffic, while for the same period eastbound the tonnage was 590,588 pounds, or 29 per cent less. During the previous fiscal year the Chicago, Burlington & Quincy handled 2,129,781 pounds of such through traffic westbound and 1,216,233 pounds eastbound. The Chicago, Milwaukee & St. Paul during the first six months of 1916 handled 4,820,000 pounds westbound and 122,049 pounds eastbound. Empty-car movement predominates westbound. Empties are in greater demand for eastbound than for westbound loading, and the use of them for eastbound merchandise leaves fewer for the carload traffic, which is said to be more profitable.

Competition of the rail-lake-and-rail lines to St. Paul, as described in *Burnham, Hanna, Munger Co. v. C., R. I. & P. Ry. Co.*, 14 I. C. C., 299, which resulted in first-class all-rail rates from the east to St. Paul, Minn., 40 cents higher than to Chicago, Ill., affected only the westbound class rates, as there was comparatively little traffic moving eastbound, except grain and flour, which were subject to special treatment. The eastbound class rates from St. Paul to eastern cities have always been on the basis of the combination of locals to and from Chicago. The local first-class rate between St. Paul and Chicago was 60 cents, or 20 cents higher than the 40-cent proportional rate or differential that was added to the New York-Chicago rate to make the through rate from New York to St. Paul. Traffic to and from La Crosse was light, and not subject to the water-competitive influences, but that point was nevertheless given the same westbound rates as St. Paul because it was intermediate via certain routes. To eastern cities, the rates from La Crosse, like those from St. Paul, are based on the combination of locals which, on first class, was 10 cents lower than from St. Paul, and 10 cents higher than westbound rates.

In readjusting the class rates from La Crosse to central territory with relation to the rates prescribed to New England and trunk line territories, a strict compliance with the findings in the previous report would, it is said by defendants, result in lower rates from La Crosse to central territory than in the reverse direction, although if there is to be any difference it should be in favor of the westbound rates. The first-class rate prescribed between La Crosse and New York, increased under *The Fifteen Per Cent Case*, was \$1.30. This did not require a reduction westbound, but as the eastbound rate based on the combination was \$1.40, the reduction to \$1.30 would be about 7 per cent. Defendants say that while no reduction was required from central territory to La Crosse, the rates prescribed would require a reduction of about 7 per cent in

the rates to central territory, and that it is this that would cause lower rates than apply westbound. The report stated that defendants would be expected to adjust rates between points in central territory and Wisconsin points with proper relation to rates found reasonable between trunk line territory and Wisconsin cities. A proper relation would not require lower rates eastbound than westbound. In any event, it was not intended in the original report that there should be any difference between the eastbound and the westbound rates.

Defendants contend that the rates prescribed are too low compared with rates from points shown in the following table taken from the record. New York is taken as a representative destination:

To New York from—	Dis- tance.	Class rates.					Average.	
		1	2	3	4	5	Rate.	Ton- mile earn- ings.
	Miles.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.	Cents.
La Crosse, Wis.....	1,103	130	114.5	87	80.9	52.2	80	1.61
Winona, Minn.....	1,128	140	121	93	65	54	94.5	1.67
Eau Claire, Wis.....	1,143	143.5	124	95.5	67	56	97.2	1.69
Chippewa Falls, Wis.....	1,155	143.5	124	95.5	67	56	97.2	1.68
Grand Rapids, Wis.....	1,066	133.5	113.5	87	63	52	89.9	1.68
Wausau, Wis.....	1,075	133.5	113.5	87	63	52	89.9	1.67
Marshfield, Wis.....	1,085	133.5	113.5	87	63	52	89.9	1.65
St. Paul, Minn.....	1,232	150	129	100	67	56	100.4	1.63
Minneapolis, Minn.....	1,242	150	129	100	67	56	100.4	1.61

The rates shown above from Eau Claire, Wausau, Grand Rapids (now Wisconsin Rapids), and Marshfield, Wis., all made on the combination basis, were approved in the previous report. The application of the long-and-short-haul provision of the act in connection with the rates prescribed for application from La Crosse would reduce rates approved in our original report from many Wisconsin points east of La Crosse.

The 145 per cent basis from La Crosse would result in rates that would reflect much lower differentials or differences over Milwaukee or other west-bank Lake Michigan ports than are represented by the rates from Eau Claire, Wausau, Grand Rapids, and Marshfield. For instance, the first-class rate from La Crosse to New York would be 40.5 cents higher than from the nearest west-bank port taking 100 per cent of the Chicago-New York rate, while the rate from Wausau was 43.5 cents higher than from the nearest port. The distance from La Crosse to the west-bank port is 196 miles, while that from Wausau is 130 miles. The difference of 40.5 cents, La Crosse over Milwaukee, and incidentally over Chicago also, is compared with the rates for the same distance in central territory, which apply

not only locally but also as proportions of through rates to and from points south of the Ohio River and west of the Mississippi River. It is shown, for instance, that the central territory rate for the same distance as from La Crosse to Chicago, 263 miles, would be 50 cents, or about the same as the local rate sought to be applied from La Crosse to Chicago. In this connection the fact that the traffic density is greater in central territory is referred to.

The evidence offered by complainant on further hearing shows that there is an important movement of manufactured products eastbound from La Crosse. Complainant points out that the rates from Beloit, Janesville, and Watertown to points in the east are the same as the westbound rates and on the basis prescribed in the original report, namely, 118 per cent of Chicago-New York rates, and that defendants did not ask that the case be reopened as to them. Rates between La Crosse and Chicago and points in central territory were also the same in both directions. Complainant refers to several cases in which we have prescribed rates in western territory which are the same in both directions. Among these are *Colorado Mfrs. Assn. v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 82, wherein it was held that the class rates between Colorado common points and Chicago, Mississippi River, and Missouri River should be the same in both directions, and *Iowa State Board of R. R. Commissioners v. A. E. R. R. Co.*, 28 I. C. C., 193, wherein the same scale of rates was named as reasonable for application from Iowa into Kansas and Nebraska as in the reverse direction. It is also observed that the lines between the Mississippi River and the east maintain the same class rates in both directions, although the movement on those rates is much heavier westbound than eastbound.

Respondents explain that rates between La Crosse and central territory are the same because, although low, the westbound rates are more nearly on a normal basis than are the westbound rates from trunk line territory to La Crosse; and that rates between Mississippi River points and the east are the same eastbound and westbound, but are subject to the influence of eastern rather than western lines, being based on rates to and from St. Louis, and rates from La Crosse are not subject to the same influence.

The westbound rates were prescribed in our original report as reasonable, and those rates subjected to the various general increases have since been reduced in *La Crosse Chamber of Commerce v. A. A. R. R. Co.*, *supra*. In the latter case westbound rates only were in issue, and although it would appear that the eastbound rates might properly be the same, we can not on this record require a reduction in eastbound rates corresponding to that in the westbound rates.

We are of opinion and find that the findings in our original report should be reaffirmed, and that the class rates from La Crosse to New York are, and for the future will be, unreasonable to the extent that they exceed the class rates in effect from New York to La Crosse on April 2, 1921, and that the class rates from La Crosse to other points in trunk line territory and points in New England territory are, and for the future will be, unreasonable to the extent that they do not bear the same relation to the rates herein found reasonable for application from La Crosse to New York as they have heretofore borne to the rates from La Crosse to New York.

An appropriate order will be entered.

CAMPBELL, *Commissioner*, dissenting in part:

That part of the finding herein that our previous report be affirmed is proper; but the remainder of the finding will result in rates from and to La Crosse higher eastbound than westbound. This is inconsistent with our previous finding, which fixes both eastbound and westbound rates the same. I believe that the conclusion in the former report was right and that the present record affords a proper basis for requiring compliance in full with that decision.

COMMISSIONER ESCH did not participate in the disposition of this case.

No. 10714.

UNITED VERDE EXTENSION MINING COMPANY  
v.

UNITED VERDE & PACIFIC RAILWAY COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL

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*Submitted July 18, 1921. Decided February 7, 1922.*

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Finding in original report, 57 I. C. C., 300, reversed. Rates on coal from Dawson, N. Mex., to Clarkdale and Jerome, Ariz., found to have been and to be unreasonable. Reasonable rates prescribed and reparation awarded.

*E. H. B. Avery* for complainant.

*F. A. Jones* for Arizona Corporation Commission, intervener.

*W. M. Peticolas, D. W. Harrington, W. C. Barnes, G. H. Baker,*  
and *E. W. Camp* for Director General, Atchison, Topeka & Santa Fe  
Railway Company, and El Paso & Southwestern Company.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

No exceptions were filed to the report on further hearing proposed by the examiner, but we have arrived at different conclusions.

In our original report, 57 I. C. C., 300, we found that the rates charged on coal, in carloads, shipped in October, 1917, and October, November, and December, 1918, from Dawson, N. Mex., to Clarkdale, Ariz., and to Jerome, Ariz., were not shown to have been or to be unreasonable. Upon petition of complainant further hearing has been had and the matter is before us upon an amplified record. Rates will be stated in amounts per net ton.

Dawson is a local point on the El Paso & Southwestern, hereinafter called the Southwestern, in the northeastern part of New Mexico. The shipments to Clarkdale moved over the rails of the Southwestern to French, N. Mex., a distance of 19 miles, and thence over the Atchison, Topeka & Santa Fe, hereinafter called the Santa Fe, to destination, a total distance of 690 miles. Clarkdale is on a branch line of the Santa Fe 38 miles southeast of Drake, Ariz. (formerly Cedar Glade), the junction with the main line. The one shipment to Jerome moved in October, 1918, over the same route to Jerome Junction and thence over the United Verde & Pacific about 26 miles to Jerome. Jerome Junction is 670 miles from Dawson. The United  
66 I. C. C.

Verde & Pacific is no longer operating and Jerome is now served only by the Verde Tunnel & Smelter, which connects with the Santa Fe at Clarkdale. The rate to Jerome is the combination on Clarkdale.

The rate charged to Clarkdale prior to June 25, 1918, was \$7.65 and subsequent thereto \$8.20. On the shipment to Jerome freight charges were collected at a combination rate of \$9.70, composed of \$8.20 to Jerome Junction, which had the same rates as apply to Clarkdale, and \$1.50 beyond. No complaint was made with respect to the latter factor. At one time during federal control, following negotiations with the complainant, the carriers offered to recommend that the \$8.20 rate be reduced to \$7.20 but this was not satisfactory to complainant and no reduction was made.

The rates charged are compared with the rates from Dawson, Trinidad, Colo., and Raton, N. Mex., to mines and smelters in southern Arizona and New Mexico. Similar comparisons are discussed in the former report and need not be further referred to here.

Complainant renews its attack upon the relationship between the coal rates to Clarkdale and those on coke, urging that whereas rates on coke are generally higher than on coal, the rate of \$7.65 on coal from Dawson to Clarkdale in effect on June 24, 1918, was \$1.10 higher than the rate on coke between the same points. The rates on coal and coke from Dawson to Clarkdale were discussed in our original report and it was shown that the usual basis for a relationship in the rates on the two commodities was not present at Clarkdale. That phase need not be considered further.

In connection with our statements based upon the original record, that competition with oil from California and Texas is encountered in southern Arizona, a member of the Arizona Corporation Commission testified at the further hearing that competitive conditions as between coal and oil are about the same in northern Arizona as in the southern part of the state. As proof, also, that the rates cited by complainant on coal to California points were not depressed by reason of water competition, the same witness stated that those rates were applied likewise to interior points in the Imperial and Sacramento valleys quite remote from the zone of water influence. Defendants' statement that rates to that territory were depressed on account of competition with coal from Utah and Wyoming was not controverted.

Complainant buys slack coal at Gallup, N. Mex., while such coal as it secures from Dawson is mine run. The latter, which must be pulverized before use, costs \$2.50 less at Dawson than at Gallup, but no comparison in prices was made between the mine run at Dawson and the slack at Gallup. Complainant's competitors at Hayden,

Ariz., on the Arizona Eastern 95 miles east of Phoenix, purchase coal at Dawson. The present rate from Dawson to Hayden is \$10.88 and to Clarkdale \$10.25. On slack coal the rate from Gallup to Hayden, 531 miles, is \$4.63, and to Clarkdale \$3.30.

Complainant ordinarily secures its coal from Gallup, which is on the main line of the Santa Fe and more than 300 miles nearer than Dawson to Clarkdale. The shipments here considered are the only shipments ever received by complainant from Dawson, and were made because of temporary shortages at Gallup due to labor conditions.

Complainant now shows that certain mining interests in Arizona, in an effort to protect their coal supply, have been negotiating for the purchase of the mine at Gallup from which complainant has been receiving its coal. Complainant fears that it may soon be unable to purchase its coal in that market and therefore seeks the establishment of lower rates from Dawson to Clarkdale and Jerome. While volume of movement is, of course, an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. The maintenance of a rate that is too high may be one of the causes of which a light movement is the effect.

The ton-mile earnings under the rates from Dawson to Clarkdale in effect on various dates were as follows: June 24, 1918, 11.1 mills; June 25, 1918, 11.9 mills; August 26, 1920, and at present 14.8 mills.

In *Arizona Corporation Commission v. A., T. & S. F. Ry. Co.*, 28 I. C. C., 428, decided October 7, 1913, we had occasion to consider the general adjustment of coal rates from Gallup, N. Mex., to Arizona points. The following table shows the rates prescribed by us and those at present in effect on lump coal to a number of points for hauls of 500 miles and more, all over two or more lines:

	Distance.	Rate pre- scribed.	Present rate.
	<i>Miles.</i>		
Bowie.....	500	\$4.00	\$5.88
Clifton.....	520	4.35	6.25
Douglas.....	546	4.00	5.88
Morenci.....	563	4.75	6.75
Benson.....	565	4.30	6.25
Bisbee.....	575	4.30	6.25
Courtland.....	582	4.50	6.50
Tombstone.....	593	5.00	7.13
Tucson.....	614	4.50	6.50
Globe.....	624	4.90	7.00
Miami.....	634	5.00	7.13
Silver Bell.....	667	5.50	<sup>1</sup> 10.25
Maricopa.....	700	4.75	6.75
Yuma.....	865	5.00	7.13

<sup>1</sup> Combination rate; no joint rate now published.



While it is true that difficult operating conditions are encountered in the transportation from Dawson to Clarkdale and that the movement between those points is infrequent, we find no justification upon this record for the excessive difference between the basis of the rates here under consideration and the basis of rates prescribed from Gallup to Arizona points in the case last cited.

We are of opinion and find that the rate assailed on the shipments moving to Clarkdale prior to June 25, 1918, was unreasonable to the extent that it exceeded \$6.50 per net ton; that on the shipments moving after June 25, 1918, the rate to Clarkdale was unreasonable to the extent that it exceeded \$7 per net ton, and the rate to Jerome was unreasonable to the extent that it exceeded \$7 per net ton to Jerome Junction, plus the local rate beyond; and that the present rate to Clarkdale is and for the future will be unreasonable to the extent that it exceeds or may exceed \$8.75 per net ton. In view of the fact that the present rate to Jerome is the Clarkdale combination, and that the Verde Tunnel & Smelter, the only carrier now serving Jerome, is not a party defendant, we will make no finding with respect to the present rate to Jerome.

We further find that complainant made shipments as described, and paid and bore the charges thereon; that it has been damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

The finding herein made as to the future is subject to any revision that may be found to be necessary upon a more extended inquiry into the general rate adjustment in this territory.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

Nothing was developed upon further hearing which warrants a reversal of our previous decision in this case. For the reasons there stated the complaint should be dismissed.

63 I. C. C.

No. 12266.

BARRETT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, PENNSYLVANIA  
RAILROAD COMPANY, ET AL.

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*Submitted August 13, 1921. Decided February 10, 1922.*

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Import rate on nitrate of soda, in carloads, from Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, during federal control, found unreasonable. Reparation awarded.

*J. L. Roberts* for complainant.

*W. L. Kinter* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation manufacturing chemicals, alleges that the rates charged on 12 carloads of imported nitrate of soda which moved during 1919 and prior to August 26, 1920, from Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, were unjust and unreasonable to the extent that they exceeded 4 cents, and that the present rate is unreasonable to the extent that it exceeds 5.5 cents. Reparation is asked. Rates are stated in cents per 100 pounds.

The nitrate of soda was imported from Chile and unloaded at Port Richmond, a Philadelphia station of the Philadelphia & Reading. It moved to complainant's siding at Frankford, which is served through the Ontario street station of the Pennsylvania, via Belmont, Pa., an established interchange point. On February 29, 1920, upon application of complainant, a commodity rate of 9 cents was established. Prior to that date the rate applicable was the fifth-class rate of 15 cents. Through error the class rate was assessed on six of complainant's shipments made on March 2, 1920, and there is an overcharge of \$268.80, which defendants state will be refunded. Effective August 26, 1920, the commodity rate was increased to 12.5 cents.

The distance from Port Richmond to Frankford over the route of movement is 18.5 miles. Reference was made to a constructive

distance of 27 miles but there is no supporting evidence which would justify its use as a basis for fixing reasonable rates. In movements via Belmont the Schuylkill River is crossed twice, once by each of the carriers, and the entire movement is within the Philadelphia terminal district, where traffic is dense and cost of operation high. The carriers bear the expense of loading the nitrate of soda into cars, estimated at from 31 to 33 cents per net ton prior to January 1, 1920, and at 37.5 cents thereafter. The average weight of the 12 shipments was 68,067 pounds.

There is a possible route only 4 miles in length from Port Richmond to Frankford via Richmond Junction, Pa., but the evidence does not justify a finding that it is a practicable route or, as contended by complainant, that rates should be based thereon. It is used only for coal for consignees in the Kensington and Frankford districts who have siding connections with the Pennsylvania.

Complainant submitted comparisons of the rates challenged with other rates on nitrate of soda, but did not support them with evidence as to similarity of transportation conditions. Most of the rates cited were for one-line hauls. It contends that the 9-cent commodity rate effective February 29, 1920, was unreasonable, if for no other reason, by comparison with the 9-cent rate from Port Richmond to Gibbstown, N. J., found reasonable in *Du Pont de Nemours & Co. v. P. & R. Ry. Co.*, 51 I. C. C., 671. Gibbstown is a point on the Pennsylvania 39.5 miles from Port Richmond, the route of movement being via Belmont. The constructive distance is 61 miles. The circumstances and conditions of movement to Gibbstown and to Frankford are not shown to be substantially similar and the rate to the former point does not furnish a measure for a reasonable rate to the latter.

Defendants urge that complainant's first request for a commodity rate was made on September 30, 1919, and was complied with within a reasonable time thereafter.

We find that the rate in effect prior to February 29, 1920, was unjust and unreasonable to the extent that it exceeded 9 cents per 100 pounds; that the shipments were made as described and that complainant paid and bore the charges thereon; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation, with interest. We further find that the rate of 9 cents per 100 pounds in effect between February 29 and August 25, 1920, was not and that the present rate of 12.5 cents per 100 pounds in effect from and after August 26, 1920, is not unjust or unreasonable.

Complainant should comply with rule V of the Rules of Practice. Its statement should include the overcharge mentioned.

INVESTIGATION AND SUSPENSION DOCKET No. 1259.  
ACID FROM HILLSBORO, ILL., TO OHIO RIVER POINTS.

*Submitted July 9, 1921. Decided February 13, 1922.*

Findings in original report, 60 I. C. C., 583, that increases in rates on acid n. o. i. b. n., in tank-car loads, from Hillsboro, Ill., to certain Ohio River crossings were justified, modified on further hearing.

*R. W. Ropiequet* for protestant.

*L. P. Day* for respondents.

REPORT OF THE COMMISSION ON FURTHER HEARING.

BY THE COMMISSION:

In our original report herein, 60 I. C. C., 583, we found justified the proposed cancellation of a commodity rate of 20.5 cents on acid n. o. i. b. n., including sulphuric acid, in tank-car loads, from Hillsboro, Ill., to Cincinnati, Ohio, and Evansville and Jeffersonville, Ind. Upon petition of the original protestant, the American Zinc, Lead & Smelting Company, manufacturers of sulphuric acid at Hillsboro, the case was reopened for further hearing. Except as noted, rates are stated in cents per 100 pounds.

In its original protest, protestant pointed out that its principal competition in the sale of sulphuric acid at these points was from Copperhill, Tenn., and placed considerable reliance on the comparisons of the increased rates with commodity rates of the Louisville & Nashville from that producing point, as follows:

To—	From Hillsboro.		From Copperhill.	
	Distances.	Rates. <sup>1</sup>	Distances.	Rates.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Cincinnati.....	303	29.5	397	\$ 19.4
Evansville.....	227	23.5	537	\$ 23.75
Jeffersonville.....	320	27.5	357	\$ 31.4

<sup>1</sup> Found justified in original report.

<sup>2</sup> These amounts are the equivalent in cents per 100 pounds of rates published on a per-ton basis.

<sup>3</sup> Combination on Louisville, Ky.

In discussing these comparisons, we said, at page 585:

As the basis proposed to be made effective (i. e., 90 per cent of fifth class) applies generally in this territory it may not be condemned as unreasonable merely because of the lower basis maintained from Copperhill. Nor can undue prejudice be predicated upon the relative adjustment as respondent does not participate in the rates from Copperhill.

Our report and order were made on March 1, 1921. Upon further hearing, protestant shows that on May 5, 1921, rates of \$3.88 per net ton, equivalent to 19.4 cents per 100 pounds, the same as that applicable from Copperhill to Cincinnati, were established by the Southern from St. Louis, Mo., and East St. Louis, Ill., to Louisville, Ky., and New Albany, Ind., about 273 miles. The Louisville & Nashville established similar commodity rates to Louisville, Jeffersonville, and New Albany. On July 29, 1921, the Baltimore & Ohio established commodity rates on sulphuric acid from West Virginia producing points to points in Ohio and western Pennsylvania lower than 90 per cent of fifth class. The Pennsylvania now carries rates between points in central and trunk line territories also lower than that basis. It was testified that the rates from Copperhill to Cincinnati have the effect of eliminating protestant from that market. All these facts are relied on as lending support to the contention that 90 per cent of fifth class is not the general basis for acid rates in this territory, and that consequently rates from Hillsboro to the Ohio River crossings named are out of line and unreasonably high.

The Cleveland, Cincinnati, Chicago & St. Louis, hereinafter called the Big Four, which has its own rails from Hillsboro to the Ohio River cities under consideration, assumed the defense of the present rates. The rate over the Southern to Louisville was authorized by the chief traffic officials of the central freight association lines, the change having been under consideration by the Southern at the time of our original decision herein. Subsequently the Big Four made application to these same officials for permission to establish the rate of \$3.88 per net ton from St. Louis, East St. Louis, and Hillsboro to New Albany, Jeffersonville, and Louisville and, in conformity with its policy of equalizing rates from St. Louis and East St. Louis to Louisville and Cincinnati, sought permission to establish the same rate to Cincinnati. These requests were denied, it apparently being the intention at that time to endeavor to increase the rates from Copperhill and then to adjust the rates from St. Louis over the Southern and Louisville & Nashville. It appears that the Big Four by mistake filed a tariff to become effective June 5, 1921, which published rates of \$3.88 per net ton from Hillsboro to Louisville and New Albany, but by our special permission it was canceled on short notice before its effective date.

One of the reasons which brought about the increases in the rates from Hillsboro in the first instance was the fact that the Louisville & Nashville, whose rates on acid from St. Louis and East St. Louis to the Ohio River were then on the basis of 90 per cent of fifth class,

insisted that unless the Big Four established rates on a similar basis it would establish commodity rates from St. Louis and East St. Louis, as it has since done.

The additional evidence presents a situation quite different from that reflected by the original record. Rates from Hillsboro are no longer on the basis generally in effect in this part of central territory, and a modification of our previous conclusions must follow.

On the facts now presented it is our opinion that respondent's present rates on acid, in tank-car loads, from Hillsboro to Cincinnati, Evansville, and Jeffersonville are no longer justified. Respondent will be expected to establish rates not higher than those canceled by the schedules suspended in this proceeding. When this has been done an order will be entered discontinuing this proceeding.

No. 8845.<sup>1</sup>

NATCHEZ CHAMBER OF COMMERCE  
*v.*  
LOUISIANA & ARKANSAS RAILWAY COMPANY ET AL.

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*Submitted February 8, 1922. Decided February 13, 1922.*

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Orders of August 12, 1920, and August 11, 1921, prescribing reasonable rates on commodities between Natchez and Vicksburg, Miss., and points in western Louisiana and requiring the removal of undue prejudice and undue preference, vacated.

*B. F. Martin* for complainant.

*W. M. Barrow* for Louisiana Public Service Commission.

*Charles D. Drayton* for defendants.

SUPPLEMENTAL REPORT OF THE COMMISSION.

MEYER, *Commissioner*:

On August 12, 1920, in *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 58 I. C. C., 610, we prescribed reasonable rates on certain commodities, in carloads, and found reasonable class rates for the transportation of commodities in less than carloads, between Natchez, Miss., and points in Louisiana west of the Mississippi River, including east-bank Mississippi River crossings in Louisiana. We required the defendants to maintain rates between Natchez and points in western Louisiana which should not exceed by more than reasonable charges for Mississippi River transfer the corresponding rates contemporaneously maintained for like distances between points in western Louisiana; with the proviso that where a river transfer was necessary between points in western Louisiana the rates between Natchez and points in western Louisiana should not exceed rates for like distances between such points in western Louisiana. On August 11, 1921, on further hearing, rates theretofore prescribed on some commodities, in carloads, were modified. We also required the maintenance of rates between Vicksburg, Miss., and points in western Louisiana which should not exceed the rates contemporaneously maintained on the same commodities for like distances between

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<sup>1</sup> This report also embraces No. 8920, *Same v. Arkansas, Louisiana & Gulf Railway Company et al.* and No. 9036, *Same v. Arkansas & Louisiana Midland Railway Company et al.*

Natchez and points in western Louisiana. 63 I. C. C., 288. These orders were complied with by defendants, and the rates now in effect are the same between points in western Louisiana as those in effect for like distances between the same points and Natchez and Vicksburg.

Effective July 1, 1921, by constitutional enactment the Railroad Commission of Louisiana was superseded by the Louisiana Public Service Commission, hereafter termed the Louisiana commission, and the latter commission, under date of July 21, 1921, approved, without prejudice to any future proceedings and without determining at that time the reasonableness or unreasonableness thereof, "the rates, fares, tolls or charges, and rules and regulations concerning or growing out of the service to be rendered by common carrier railroads" under the control of the Louisiana commission. The modified rates prescribed by our order of August 11, 1921, have also been approved by the Louisiana commission for application on intrastate traffic by order dated October 26, 1921.

Effective October 1, 1920, the Railroad Commission of Louisiana permitted the carriers to make increases in intrastate freight rates within Louisiana corresponding to the increases authorized by us on July 29, 1920, for interstate application with the exception of rates on sugar cane, milk and cream, rice, and sand and gravel "to be used in the construction of good roads, streets, or public works." These commodities are not included among those covered by our orders in this proceeding, but were considered by us in *Louisiana Rates, Fares, and Charges*, 60 I. C. C., 467.

The Louisiana commission by petition filed December 27, 1921, setting forth the above facts, asks us to set aside our orders of August 12, 1920, and August 11, 1921, in so far as they affect intrastate rates between points in western Louisiana. It urges that our authority over intrastate rates arises solely out of a finding of unjust discrimination or undue prejudice against interstate commerce, shippers, or localities; that by action of the state authorities intrastate rates within western Louisiana are on the same level as the interstate rates prescribed by us between Natchez and Vicksburg and such points; that therefore no unjust discrimination or undue prejudice exists and we are without jurisdiction to continue in effect our orders herein. This petition is supported by the Alexandria Chamber of Commerce, Monroe Traffic Bureau, and Shreveport Chamber of Commerce.

The defendants reply that on the assumption that the orders in this case have been complied with and that there is no longer any undue prejudice against interstate traffic they have no objection to the petition.



The complainant, Natchez Chamber of Commerce, asserts that these orders requiring the removal of undue prejudice were issued only after investigation extending over a period of several years, necessitating costly and protracted litigation; that the orders of the Louisiana commission approving the maintenance of intrastate rates on the same level as the interstate rates were issued only after we had required the removal of undue prejudice; that continuance of our orders assures a continuance of a nonprejudicial adjustment and effectively prevents any unjust discrimination against interstate commerce; and that vacation of our orders might be followed by a return to the unduly prejudicial conditions which previously existed. It urges that if the present adjustment is reasonable and nonprejudicial and will not be changed by the Louisiana commission, nothing is gained by a vacation of the orders.

There are often minor readjustments in rates between points within a state which can be made without injuriously affecting interstate commerce and under the present situation such readjustment can only be made after proceedings are had before us and our orders are modified. There are now pending upon further hearing petitions for modification of our orders with respect to certain rates on petroleum, crude, fuel, and residuum, and acid phosphate. Our orders in this proceeding with respect to class rates were vacated on June 5, 1921, 62 I. C. C., 464.

We can not agree with the contention of the Louisiana commission that, after undue prejudice against interstate commerce has been removed by compliance with our order, the action of state authorities in approving the rates prescribed deprives us of jurisdiction to require a continuance of the nonprejudicial adjustment. We are convinced, however, that the unlawful situation which resulted in the issuance of our orders will not be restored and that there is no real necessity for the further continuance of our orders. If such a situation should again be brought about by the action of the carriers or the state authorities, we might then be justified in taking another course.

We are of opinion and find that the undue prejudice which caused the entry of our orders of August 12, 1920, and August 11, 1921, does not now exist and those orders will be vacated. This action will make unnecessary further consideration of rates on petroleum and acid phosphate above referred to.

An appropriate order will be entered.

No. 12029.

MACGOWAN COFFEE COMPANY

v.

ILLINOIS CENTRAL RAILROAD COMPANY, DIRECTOR  
GENERAL, AS AGENT, ET AL.

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*Submitted July 21, 1921. Decided February 10, 1922.*

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Rates on green coffee, in carloads, from New Orleans, La., to Jackson, Miss., found not unreasonable prior to January 28, 1920, but unreasonable on and after that date. Reparation awarded and reasonable rates for the future prescribed.

*George Butler* for complainant.*A. P. Humburg* and *E. A. Smith* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant and defendants to the report proposed by the examiner.

Complainant is a corporation dealing in coffee at Jackson, Miss. By complaint filed December 10, 1920, as amended, it alleges that the rates charged on 15 carloads of green coffee from New Orleans, La., to Jackson since December 19, 1918, were, and that the present rate is, unjust and unreasonable. We are asked to award reparation and to prescribe just and reasonable rates for the future. Rates will be stated in cents per 100 pounds.

Jackson is a jobbing point, 179.6 miles north of New Orleans over the New Orleans Great Northern and 184 miles over the Illinois Central. All the shipments on which reparation is asked moved over the Illinois Central. Seven, weighing 330,970 pounds, moved prior to January 28, 1920; one, weighing 31,489 pounds, on February 20, 1920; three, weighing 106,013 pounds, between March 31 and August 24, 1920; and four, weighing 142,322 pounds, after August 26, 1920. During this period six carloads were received at Jackson over the Yazoo & Mississippi Valley and Alabama & Vicksburg, but none moved over the New Orleans Great Northern. During a portion of

66 I. C. C.

this time complainant, on account of abnormal market conditions, received many less-than-carload shipments.

The rate on green coffee, in carloads, from New Orleans to Jackson, was 32 cents on March 6, 1903. On October 15, 1916, it was reduced to 23 cents. Complainant's business was established in 1915, and it does not appear that there was any carload movement of green coffee to Jackson prior to that time. On June 25, 1918, the rate was increased to 29 cents under authority of general order No. 28 of the Director General of Railroads. It was increased on January 28, 1920, to 43 cents, and on August 26, 1920, to 54 cents.

Coffee from New York to points in official classification territory moves almost exclusively under class rates. To meet the rates from New York, the lines from New Orleans published commodity rates to points north of the Ohio River, and subsequently to points south of the Ohio River. Chicago is perhaps the largest interior coffee-consuming point in this country and is 930 miles from New Orleans and 920 miles from New York.

Prior to *The Five Per Cent Case*, 31 I. C. C., 351, 32 I. C. C., 325, the rate on coffee from New Orleans to Chicago was the same as the lake-and-rail rate from New York to Chicago, viz, 25 cents. As a result of the increases authorized in that case and in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and the 25 per cent increase authorized by general order No. 28, the lake-and-rail and all-rail rates from New York to Chicago became 45 cents. On April 24, 1919, the lake-and-rail rate was reduced to 41 cents. On June 25, 1918, the rate from New Orleans was increased to 31.5 cents. This great disparity and the disruption of a long-continued relationship caused complaint by the eastern shippers, and the southern carriers undertook to revise all their coffee rates from New Orleans and to establish the New York-Chicago rate from New Orleans to Chicago. This revision was made effective January 28, 1920. The rate from New Orleans to Chicago was made 45 cents. In the readjustment a difference of 2 cents was observed between Chicago and St. Louis and Ohio River crossings, relying on *Indianapolis Freight Bureau v. P. R. R. Co.*, 15 I. C. C., 567. Because of long-established relationships, the 43-cent rate to St. Louis and Louisville, Ky., was made applicable to Nashville, Tenn., Birmingham, Ala., and Meridian and Jackson, Miss. The rate to Memphis, Tenn., was made 37.5 cents.

The carriers, in compliance with our order in *Memphis-Southwestern Investigation*, 55 I. C. C., 515, published, to become effective March 1, 1921, an entirely new adjustment of rates on coffee from New Orleans to points in central Mississippi valley territory, mak-

ing the rate to Jackson 40 cents. The tariff naming this rate was suspended in Investigation and Suspension Docket No. 1303. By order of November 15, 1921, we directed the cancellation of certain of the suspended rates, including the 40-cent rate to Jackson, which was not, however, specifically condemned as unreasonable. The following taken from exhibits are the rates from New Orleans to Jackson and related points since November 27, 1909, the distances, and the proposed rates:

New Orleans to—	Distance.	Nov. 27, 1909.	Oct. 30, 1916.	June 25, 1918.	Jan. 28, 1920.	Aug. 26, 1920.	Proposed March 1, 1921.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Jackson.....	184	32	23	29	43	54	40
Meridian.....	202	32	23	29	43	54	40
Greenwood.....	282	20	20	25	44	55	43
Winona.....	278	39	39	49	51.5	64.5	43
Natchez.....	214	17	17	21.5	29	36.5	40
Vicksburg.....	235	17	17	21.5	29	36.5	40
Greenville.....	317	17	17	21.5	34	42.5	43
Memphis.....	394	17	17	21.5	37.5	47	47
Birmingham.....	355	35	23	29	43	54	54
Nashville.....	562	22	23	29	43	54	57.5
Louisville.....	749	23	23	29	43	54	57.5
Chicago.....	930	25	25	31.5	45	60	60

Coffee is a staple commodity of regular movement. The average loading of the 15 cars on which reparation is asked was 40,719 pounds, and of all cars handled by complainant during the period covered by the complaint, including those moving over other lines, 40,132 pounds. Defendants' witness testified that the average loading of shipments made from New Orleans to Jackson since March 1, 1920, was 34,500 pounds.

Complainant compares the rates on coffee with the rates on sugar from New Orleans to Jackson and other destinations. Sugar loads more heavily and moves from New Orleans in greater volume than coffee. The present value of green coffee exceeds that of sugar. Since October 30, 1916, the rates on coffee from New Orleans to Jackson and Meridian have been increased 134.8 per cent, and to the other points shown in approximately the same or greater proportion. The present coffee rate is shown to be 90.5 per cent of the class rate and the sugar and rice rates from New Orleans to Jackson respectively 61 and 62.5 per cent of the class rates.

The rates on green coffee, in carloads, from New Orleans to typical points, together with the earnings per ton-mile and per car-mile are shown, as follows:

66 I. C. C.

From New Orleans to—	Distance.	Present rate.	Earnings.		Proposed rate Mar. 1, 1921.	Earnings.	
			Ton-mile.	Car-mile. <sup>1</sup>		Ton-mile.	Car-mile. <sup>1</sup>
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>		<i>Cents.</i>	<i>Mills.</i>	
Jackson, Miss. ....	184	54	68.7	\$1.17	40	42.5	\$0.87
Hattiesburg, Miss. ....	117	53	90.7	1.80	33	56.6	1.18
Meridian, Miss. ....	202	54	63.4	1.06	40	39.6	.79
Brookhaven, Miss. ....	130	53	81.5	1.63	34	52.3	1.04
Vicksburg, Miss. ....	235	36.5	31.1	.62	40	34	.68
Natchez, Miss. ....	214	36.5	34.1	.68	40	37.3	.74
Greenville, Miss. ....	317	42.5	26.8	.53	43	27.1	.54
Greenwood, Miss. ....	282	55	39	.78	43	30.5	.61
Montgomery, Ala. ....	318	54	34	.68	54	34	.68
Birmingham, Ala. ....	355	54	30.4	.61	54	30.4	.61
Chattanooga, Tenn. ....	498	64.5	25.9	.52	64.5	25.9	.52
Memphis, Tenn. ....	394	47	23.8	.47	47	23.8	.47
Nashville, Tenn. ....	562	54	19.2	.38	57.5	20.4	.41
Louisville, Ky. ....	749	54	14.4	.29	57.5	15.3	.30
St. Louis, Mo. ....	696	54	15.5	.31	57.5	16.5	.33
Chicago, Ill. ....	930	60	12.9	.26	60	12.9	.25

<sup>1</sup> Average loading, 40,000 pounds.

From the above it appears that the rate to Jackson was not, distance considered, above the general level of rates to points in Mississippi other than those on the Mississippi River. There are coffee roasters at Vicksburg, Hattiesburg, Laurel, and Tupelo, Miss., and green coffee has moved in carloads to each of these points.

Defendants' justification for the readjustment of January 28, 1920, was the restoration of the relationship which had previously existed between the New York-Chicago and the New Orleans-Chicago rates. It is not shown to what extent the competition from New York extends south of the Ohio River, but there is no competition from New York at Jackson. The rate to Jackson was increased in approximately the same proportion as that to Chicago.

We find that the rate applicable on the shipments made prior to January 28, 1920, was not unreasonable; that the rate applicable on the shipments made on and after that date and prior to August 26, 1920, was unreasonable to the extent that it exceeded 32 cents per 100 pounds; and that the rate applicable on the shipments made on and after the last-named date was, and that the present rate is, unreasonable to the extent that it exceeded, or may exceed, 40 cents per 100 pounds. We further find that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation in the sum of \$34.64, with interest, from the Director General of Railroads, as Agent, and in the sum of \$315.87, with interest, from the Illinois Central Railroad Company.

An appropriate order will be entered.

No. 11818.<sup>1</sup>

AMERICAN WHOLESALE LUMBER ASSOCIATION

v.

DIRECTOR GENERAL, AS AGENT, ABERDEEN &  
ROCKFISH RAILROAD COMPANY ET AL.

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*Submitted February 1, 1922. Decided February 11, 1922.*

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1. Charge of \$10 per day on cars of lumber held for reconsignment beyond 48 hours after 7 a. m. of day following notice of arrival found not to have been unreasonable or otherwise unlawful. However, under present conditions with a great number of idle freight cars, and an entire absence of congestion throughout the country, the charge is, and while present conditions continue will be, unreasonable.
2. Reductions proposed by the Chicago, Peoria & St. Louis in reconsignment charges on lumber found not justified and its suspended schedules ordered canceled. Other suspended schedules found justified.

*Davies & Jones and Edward A. Haid* for complainants.

*George B. Webster* for Associated Cooperage Industries of America, and *B. T. Bailey* for Central Wisconsin Supply Company, interveners in behalf of complainants.

*Brown & Boyle, L. C. Boyle, W. J. Duffey, Geo. N. Brown, W. E. Gardner, F. M. Ducker, Frank Carnahan, and J. C. Knox* for National Retail Lumber Dealers Association, Georgia-Florida Saw Mill Association, Michigan Hardwood Manufacturers' Association, North Carolina Pine Association, Northern Hemlock & Hardwood Manufacturers' Association, District No. 1 Ohio Association of Retail Lumber Dealers, Buffalo Lumber Dealers Association, White Pine Association of the Tonowandas, East Side Lumber Trade Exchange, St. Louis Lumber Trade Exchange, Southern Pine Association, California Redwood Association, Southern Cypress Manufacturers' Association, Retail Lumber Dealers Association of the State of New York, and

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<sup>1</sup> This report also embraces subnumbers in Docket No. 11818 as follows: Sub-No. 1, Van Cleave Saw Mill Co. v. Director General, as Agent; No. 2, Geo. W. Miles Timber & Lumber Co. v. Same; No. 3, Berthold & Jennings Lumber Co. v. Same; No. 4, Robt. Kamm Lumber Co. v. Same; No. 5, Nicola, Stone & Myers Co. v. Same; No. 6, Myers-Parsons Lumber Co. v. Same; No. 7, Union Wholesale Lumber Co. v. Same; No. 8, Burnaby Bros. Lumber Co. v. Same; No. 9, Chicago Lumber & Coal Co. v. Same; No. 10, South Arkansas Lumber Co. v. Same; No. 11, W. T. Ferguson Lumber Co. v. Same; No. 12, Gloor-Oatmann Lumber Co. v. Same; and No. 13, Western Lumber Co. v. Same; also Investigation and Suspension Docket No. 1421, Penalty Charge on Lumber Held for Reconsignment.

West Coast Lumbermen's Association, interveners in behalf of defendants.

*George R. Allen, John F. Finerty, Andrew P. Humburg, Parker McColleston, Royal T. McKenna, and Marion B. Pierce* for defendants.

#### REPORT OF THE COMMISSION.

##### BY THE COMMISSION:

Exceptions were filed by complainants and by interveners, representing coopeage-stock interests, to the report proposed by the examiner. Replies to the exceptions were filed by defendants and interveners opposing the complainants, and oral argument was had.

Complainant in No. 11818, an organization composed of 325 wholesale distributors of lumber, attacks as unreasonable, unjustly discriminatory, and unduly prejudicial the so-called penalty charge of \$10 per car for each day or fraction thereof that cars, loaded with lumber and other forest products, are held for reconsignment beyond 48 hours after the hour at which free time begins to run under the demurrage rules. In the subnumbered dockets we are asked to award reparation against the Director General of Railroads on shipments upon which the charge was collected during federal control. The allegations in those complaints are substantially the same as the allegations in No. 11818. By agreement between the parties the evidence was directed solely to the lawfulness of the charge. Various lumber and lumber products manufacturers' and dealers' associations were permitted to intervene, some on behalf of complainants and others on behalf of defendants.

Investigation and Suspension Docket No. 1421 involves the proposed cancellation of this penalty charge by the Toledo, St. Louis & Western, the Chicago & Alton, the Chicago, Peoria & St. Louis, the Chicago & Eastern Illinois, the Kansas, Oklahoma & Gulf, the Kansas, Oklahoma & Gulf Railway of Texas, and the Okmulgee-Northern Railroad. At the hearing counsel for the Chicago & Eastern Illinois stated that his road had filed an application to cancel the tariff under suspension and thereby to restore the penalty charge. The Chicago, Peoria & St. Louis also proposes to cancel the \$3 reconsignment charge on lumber when instructions are received prior to arrival of car, and to reduce the charge from \$7 to \$3 when instructions are received after arrival of car.

Protests against the cancellation of the \$10 charge were filed by the National Retail Lumber Dealers Association and the Southern Pine Association, composed of lumber manufacturers and retail lumber dealers. The complainant in No. 11818 intervened in behalf of

respondent. The schedules proposing these changes were suspended by us until March 14, 1922.

The penalty charge applied originally on lumber only, and was established by the Director General on October 20, 1919. The schedule naming the charge stated that it was "to prevent undue detention of equipment under present emergency" and "is in addition to any existing demurrage or storage charge." On December 1, 1919, it was published in the uniform demurrage tariff, and was made applicable on lumber, shingles, poles, piling, mine timber, box, barrel or crate material, and other forest products not further finished than sawed or dressed, and on all forest products on which the lumber rate applies. All these commodities will hereinafter be termed lumber. Prior to August 19, 1920, the penalty charge was applied on cars held on Sundays and legal holidays. On that date the charge was made subject to the provisions of the national car demurrage rules which provide that Sundays and legal holidays shall be excluded in computing time. By tariff supplement effective February 29, 1920, the penalty charge was made to expire June 1, 1920, and by later schedules extended so as to expire with the close of business January 1, 1921. On December 2, 1920, schedules were filed to continue the penalty charge after January 1, 1921, without expiration date. These schedules were protested by complainant and others, but we permitted them to go into effect.

There are two general classes of mills in the lumber industry, the large mill, which cuts 10,000,000 feet and over annually, and the small mill, which cuts less than that amount. In 1918 there were 785 large mills and 21,781 small mills, constituting 4 and 96 per cent, respectively, of the total number of mills. These produced 60 and 40 per cent, respectively, of the total lumber.

The large mills purchase large tracts of timber which will provide operations for a number of years. Such mills are equipped with modern machinery, have large yards, in most cases, where lumber can be graded and piled according to quality and size, and generally operate planing mills for the manufacture of siding, roofing, lining for railroad cars, etc. Some of them have their own sales organizations and maintain retail yards.

Generally the small mill is portable; it can be operated on one tract for a few years and then removed to another. It usually follows the large mill and cuts small tracts of timber which have been left, or goes back over cut-over lands and small areas that the large mill could not reach. The small-mill operator usually has only a small amount of capital, and, except for such stock as may be sold locally, disposes of his lumber largely through wholesalers,



who often advance money for the stumpage and sometimes for the pay roll for manufacturing. In such instances they retain title to the stumpage as security, and they have the mill load the lumber as early as possible.

When loaded, the mill bills the lumber to the wholesaler at a reconsignment point and receives an advance against the shipping documents. Upon arrival of the car at the reconsignment point the local agent notifies the consignee. The tariffs permit one reconsignment on lumber and the demurrage rules allow 24 hours free time on cars held for reconsignment. As stated, the penalty charge does not begin to accrue until 48 hours after the hour at which free time begins to run. Upon receipt of the invoice from the mill the wholesaler lists the car in his transit list. These lists are issued triweekly, and are circulated among the trade in an effort to secure purchasers for the shipment. A corrected list giving information as to the cars sold is sent to the wholesaler's salesmen daily. If any of the unsold cars on the list have been reported as reaching the reconsignment point, the salesmen are instructed to give such cars immediate attention. Moreover, night telegrams are sent to salesmen and dealers in an effort to secure immediate sales.

Complainants point out that the charge was originally established by the Director General as a "penalty for detention of equipment" and contend that he had no authority to establish a penalty. The federal control act provides:

That during the period of federal control, whenever in his opinion the public interest requires, the President may initiate rates, fares, charges, classifications, regulations, and practices by filing the same with the Interstate Commerce Commission. \* \* \*

Said rates, fares, charges, classifications, regulations, and practices shall be reasonable and just \* \* \*.

It is complainants' position that this language did not give power to the President or the Director General to assess a penalty; and that Congress could not have given either of them that power because the imposition of a penalty is a legislative function which can not be delegated.

We are of opinion that the Director General was authorized to inaugurate any reasonable and just regulation and practice which he might find necessary to eliminate the abuse of excessive and unreasonable detention of freight cars.

The right of the carriers to assess charges for undue detention of equipment existed at common law, and such charges are now published in schedule form in accordance with the provisions of the interstate commerce act. It is settled that we may require the carriers to maintain reasonable demurrage charges which are in part

compensation to the carriers for use of their equipment, and in part penalties imposed on shippers for detention of cars. A charge in the nature of a penalty is not unlawful if its purpose is to secure for the public a more efficient use of equipment. While it should not be so high as to work an undue hardship upon the shipper who must occasionally pay it, it should be sufficient in amount to accomplish the purpose for which it is intended.

We have in a number of cases considered and approved charges, established by carriers, which admittedly were in part penalties to prevent detention of equipment by shippers. Thus, in *American Paper & Pulp Assn. v. B. & O. R. R. Co.*, 41 I. C. C., 506, at page 512, we said:

A rule which permits the shipper to use valuable facilities of the carrier for unlimited periods, while seeking to find the markets for the goods stored or while waiting the convenience of the consumer, is not a proper rule, and the practice, as complainant charges, is beyond the function of a common carrier. Such a practice may, and often does, conflict with those functions.

The lawfulness of the charge is further assailed on the ground that, prior to its establishment, the schedules of the carriers and of the Director General provided in substance that freight might be reconsigned at the through rate applicable from the point of origin via the reconsignment point to the final destination without limit of time within which the reconsignment must be made. They contend that defendants have no right to assess a penalty against the shipper for availing himself of an arrangement so held out to shippers; and that the assessment of a penalty for the detention of cars is a double charge for a single service, because the demurrage charges at the time the penalty charge was made effective had been increased to care for the identical emergency for which the penalty charge was established.

The contention that a double charge was made for a single service was advanced in *N. Y. Hay Exchange Assn. v. P. R. R. Co.*, 14 I. C. C., 178, and again in the case of *New York & New Jersey Produce Co. v. R. R. Co.*, 49 I. C. C., 93, where the assessment of track storage charges, in addition to demurrage charges, was attacked. In both cases we found against the contention. A charge is not necessarily unlawful because it is made up of two separately published charges. The real question is as to the propriety of the aggregate charge.

Complainants refer to the many embargoes laid by the carriers, particularly in 1919 and 1920, during the period of federal control, and contend that the embargoes were largely responsible for the detention of lumber at the reconsignment points, since they limited the markets at which lumber could be sold. There was considerable confusion with respect to the application of the embargoes laid

and the notices in connection therewith during this period. It frequently happened that a shipment was sold before it reached the reconsignment point, but that upon presenting an order for reconsignment the shipper was for the first time notified that the final destination was embargoed. In some instances carriers accepted orders for reconsignment, and when the car arrived at the reconsignment point then advised that the destination was embargoed; in others, carriers held shipments at the reconsignment point on account of embargoes when, as a matter of fact, the final destination was not embargoed. For all these reasons complainants assert that it was necessary to resell the lumber and ship to other destinations, which took time and resulted in penalty charges being assessed. It is contended by complainants that an embargo is a disability of the carrier, and that where shipments were held on account of an embargo and the penalty collected, the charge was unlawful because it penalized the shipper or consignee for the disability of the carrier. Complainants also insist that having established through rates and provided for reconsignment it was unlawful to assess penalty charges upon shipments held on account of embargoes, notwithstanding tariff provisions to the effect that reconsignment orders would not be accepted to a point against which an embargo was in force at the time the shipment was forwarded from point of origin. This latter contention is contrary to our decisions, but it is argued that we have erred in this respect. The argument is not convincing.

Complainants further contend that the act requires carriers to publish and file embargoes in the manner prescribed with respect to tariffs, and we are asked to find that all embargoes which were not so published and filed were illegally laid and that all demurrage and penalty charges assessed where cars were held because of such embargoes were unlawful. The law did not, and does not, require that embargo notices be published as schedules are published. *La Fayette Box Board & Paper Co. v. Director General*, 59 I. C. C., 105. As a practical matter, the conditions necessitating embargoes frequently develop and end quickly. To wait until a schedule could be published and become effective would, therefore, defeat the object sought. On the other hand, to keep an embargo in effect until a schedule could be legally canceled would work unwarranted hardship upon the public.

No evidence as to the reasonableness *per se* of the charge assailed was offered other than an exhibit submitted by complainant to show that the net revenues per car-day for class-I carriers were \$1.07 in 1916, 99 cents in 1917, 76 cents in 1918, 58 cents in 1919, 31 cents in 1920, and 23 cents in January and February, 1921; and for the larger roads in the eastern district 32 cents in 1919. The margin between

the price paid to the mill man and the selling price of a car of lumber ranged from \$18.48 in 1915 to \$55.36 in 1920. No figures were shown for 1921. Complainants contend that the penalty charge is confiscatory for the reason that its application for only a few days will wipe out all this margin. But the charge applies only when shipments are detained beyond the 48 hours of free time.

The allegations of unjust discrimination and undue prejudice are based upon the fact that the penalty charge is applied on lumber when held for reconsignment and not on other commodities held for that or other purposes, or on cars held by shippers for loading.

At complainants' request, we required certain defendants to make special reports in the nature of replies to a questionnaire in connection with No. 11818. Complainants submitted several exhibits compiled from data thus furnished. One of these exhibits shows the number of cars of each of 18 commodities held for reconsignment one, two, three, and four days and over four days, the total number of cars and the total car-days, during the months of September, 1917, October, 1918, and November, 1919. This statement shows that there were 2,447 cars of lumber held 23,932 days, an average of 9.7 days, under the heading "over four days." Complainants admit that this statement shows the number of cars of lumber held over four days was larger than that of any other commodity shown. They assert that this is due in part to the numerous embargoes against lumber, which shut off markets where most lumber is sold, causing the shipper to hold the cars until he could find another purchaser, and partly to embargoes which did not exist or which having existed had been raised. The commodities held for reconsignment, the number of cars of each commodity, and the average time held are shown below:

Commodity.	Cars.	Days.	Average days.
Coke.....	276	1,751	6.34
Pipe.....	171	816	4.77
Lumber.....	7,505	34,781	4.63
Structural iron.....	159	727	4.57
Fireproofing.....	15	65	4.33
Structural steel.....	247	1,066	4.31
Brick.....	138	543	3.93
Coal.....	3,189	11,218	3.57
Oil.....	1,105	3,874	3.5
Sand.....	126	408	3.24
Cement.....	138	367	2.8
Hay.....	2,943	7,714	2.62
Tile.....	48	120	2.5
Fruits and vegetables.....	10,631	25,945	2.44
Sugar.....	205	502	2.44
Oats.....	2,549	6,170	2.42
Corn.....	2,508	5,594	2.23
Wheat.....	6,131	13,287	1.89

The following statement shows the number of order-notify shipments of lumber and other commodities held beyond free time for 66 I. C. C.

orders, other than reconsignment, for the same months as in the preceding table:

Period.	Lumber.		Other commodities.	
	Cars.	Days.	Cars.	Days.
One day.....	196	196	12,885	12,885
Two days.....	116	232	7,807	15,614
Three days.....	97	291	4,778	14,334
Four days.....	64	256	2,890	11,560
Over four days.....	158	1,572	6,853	64,021
Total.....	631	2,547	36,183	118,414

Of all commodities held beyond free time during the months mentioned, there were 34,199 cars of lumber, other than for reconsignment, held 94,431 days, and 316,430 cars of other commodities held 820,950 days, aggregating 350,629 cars held a total of 915,381 days.

A summary of these statements shows:

	Cars.	Days.
Lumber held for reconsignment.....	7,505	34,781
Other commodities held for reconsignment.....	30,579	107,443
Order-notify shipments held for orders.....	85,814	120,961
All other cars, all commodities, held by or for consignor or consignee.....	350,629	915,381
Total.....	424,527	1,178,566

Complainants point out that the cars of lumber held for reconsignment represent less than 2 per cent of all cars of all commodities held by shippers, and less than 3 per cent of all car-days all commodities were detained. The statements show, however, that the total cars of lumber held for reconsignment represent about 20 per cent of all cars held for reconsignment, and that lumber for reconsignment is detained at the hold point a longer average time than any other commodity which is reconsigned in a substantial amount. While the number of order-notify shipments held for orders is greater than the number of cars of lumber held for reconsignment, the average detention on the former is 3.37 days as compared with 4.63 on the latter. Furthermore, order-notify shipments are held at points scattered throughout the country while lumber for reconsignment is largely held at comparatively few points, and therefore more effectively tends to congest the movement of traffic.

Reconsignment of building material, such as cement, hollow tile, structural iron and steel, sand, gravel, brick, and fireproofing, is insignificant as compared with lumber. While general statements were made by complainants' witnesses to the effect that there was competition between some of these articles and lumber, no substantial evidence was offered to show that any undue prejudice existed. The

other commodities shown as held under reconsignment do not compete with lumber, and the circumstances under which they are held are different. Fruits and vegetables may properly be excepted from a rule applicable to dead freight. Hay and grain are reconsigned to a considerable extent, but this is due largely to regulations, state and national, for grading and inspection.

Statements were made that the penalty charge had resulted in reducing lumber shipments because the shippers do not want to take the risk of having the penalty applied. No figures were offered to support these statements. On the contrary, it was shown that notwithstanding advices from wholesalers that mills should discontinue shipments on account of market conditions, shipments were continued from the mills.

The penalty charge applies only to cars held for reconsignment, and complainants contend that its application to lumber held for reconsignment and not on commodities reshipped results in discrimination against the former. Evidence was offered to show that considerable delay is sometimes occasioned to commodities which are reshipped. Only one change in destination is permitted at the through rate under the reconsignment rules. A subsequent change is treated as a reshipment from point of reforwarding and the shipment is charged the tariff rates therefrom. Thus a shipment rebilled pays the combination rate based on the reforwarding point, which ordinarily is in excess of the joint through rate obtained under a reconsignment; and in addition thereto, a charge is made under certain circumstances for changing the destination.

Complainants contend that the assessment of the penalty charge on Sundays and legal holidays prior to August 19, 1920, was illegal and unreasonable. The only testimony offered to substantiate these allegations is that of one witness who testified that at Seattle, Wash., he never saw a freight office open on Sundays or holidays, and of another witness who testified that certain carriers had made refund of penalty charges which were assessed on Sundays and holidays during the period mentioned. Defendants' witnesses testified that the penalty charge was originally published on the same basis as storage charges, which apply on Sundays and holidays; that it was intended that they should apply on such days because of the great scarcity of cars when the tariff was originally published; and that the change subsequently made was to bring the penalty charge into conformity with the demurrage tariffs.

A stipulation as to certain facts concerning cars of lumber held under varying circumstances was submitted for the purpose of obtaining a ruling from us as to whether the penalty charge was legally applicable in the circumstances set forth in the stipulation. The in-

formation submitted is not sufficient in all instances to warrant a ruling. The penalty charge was assessed in some instances because the carrier refused to reconsign to an embargoed point where the embargo was placed after the shipment had left point of origin; in others, the penalty charge was assessed where shipments were held by a carrier because of an embargo prohibiting the movement of its system equipment off its lines. The record also indicates that the penalty charge was assessed where cars were refused at original destination, the freight charges paid and new bills of lading taken out consigning the cars to new destinations; that it was also assessed where delivering lines refused to deliver to a belt switching line without prepayment of the charges, although there was a joint rate in effect from point of origin to points on the belt line; that the penalty charge was assessed where shipments reconsigned to a certain point reached that point, were placed for unloading, the charges paid, and subsequently a switching order issued to deliver the shipment to another carrier within the terminal and a new bill of lading issued by the latter, consigning the car to a point outside the terminal. Under each of the foregoing instances the cars were apparently not held for reconsignment, except in the instance where the carriers refused to reconsign to an embargoed point where the embargo was placed after the shipment had left the point of origin. Where they have not already done so defendants should make prompt refund of the overcharges, unless, in the excepted instance, their tariffs contained a clause that shipments would not be reconsigned to embargoed points. *Reconsignment Case*, 47 I. C. C., 590, 634.

Complainants cite instances where there was considerable delay beyond the usual time in the movement from points of origin to the reconsignment point. It urges that these delays were numerous and many times resulted in cancellation of sales of lumber made while the cars were in transit. It asks us to find that where cars have been delayed in transit beyond reasonable and usual running time no penalty should be assessed for failure to reconsign within 48 hours. We are not persuaded that such a finding should be made.

On behalf of the Associated Cooperage Industries of America it is shown that cooperage stock, unlike lumber, is not placed in transit for the purpose of selling it after shipment, but that sales orders are actually held for each shipment when it leaves its point of origin. Cars of cooperage stock are sometimes detained at the original destination because they have been refused by the consignee as being off grade or improperly loaded. Such occasions, while infrequent, result in considerable detention because a new purchaser must be found for the shipment. The association urges that even if the

charge should be sustained as to lumber, an exception should be made with respect to cooperage stock.

Following a heavy surplus of cars after the signing of the armistice in 1918, and early in 1919, there was a rapid decrease in idle cars, and by October 1, 1919, a serious car shortage threatened. Campaigns for heavy loading and for prompt loading and unloading, which had been conducted prior to the period of depression in the early months of 1919 were again inaugurated by the Director General. Committees which had been created at strategic points throughout the country to collect data as to transportation conditions and car service in such sections prior to 1919, and which had been disbanded in the early months of that year, were reorganized. Business rapidly increased, and, as it was impossible to obtain new equipment, the car shortage became more serious and threatening, notwithstanding the efforts of the Railroad Administration. Reports of inspectors and committees indicated a heavy detention of cars containing lumber awaiting reconsignment. In September, 1919, special inquiry was made at about 30 widely separated points to determine the extent of this detention. Reports were received covering various periods during August, September, and October, 1919. These reports showed an average detention of 7.9 days for cars of lumber held for reconsignment. In view of the conditions the Director General established the charge here in issue. Shortly after the establishment of this charge a public hearing with respect thereto was held before officials of the Railroad Administration. Representatives of lumber manufacturers, shippers, and dealers were present at this hearing, but the penalty charge was kept in effect. In the early part of December, 1919, the Railroad Administration sent out inquiries to ascertain in a general way the effect of this penalty charge. The following table, thus secured, shows a comparison of the average detention of cars of lumber held for reconsignment at various points during August, September, and October, 1919, preceding the establishment of the penalty with that in November and December, 1919, and January, 1920, subsequent to the establishment of the penalty.

Place.	Before penalty.	After penalty.
	<i>Days.</i>	<i>Days</i>
Cheyenne, Wyo.....	11.2	7.4
Norfolk, Va.....	4.1	2.1
All points on C. & E. I. R. R.....	3.4	2.3
Whitefish, Mont.....	12.2	4.7
All points on I. C. R. R.....	9.5	5.6
Dupo, Ill. (M. P. R. R.).....	10.2	5.1
Cincinnati, Ohio (L. & N.).....	5.9	2.6
Jacksonville, Fla.....	4.8	.....
Minnesota Transfer, Minn. (G. N. R. R.).....	7.6	8



While there was an increase in the average number of days detention on the Great Northern, at Minnesota Transfer, after the establishment of the penalty charge, the number of cars detained after the penalty became effective was only 7 as compared with 68 cars for the period prior to its establishment. Complainants criticise the comparisons, and allege that the reports on which they are based do not take into consideration the fact that the movement of lumber was delayed on account of embargoes; that the roads reporting did not use the same periods; that the detentions for the various periods were added together; that the figures include free time; and that a check of a few of the cars as to which complainants could secure information discloses that they were held by the carriers in error and not for account of consignor or consignee.

In December, 1920, the carriers sent out inquiries through the American Railway Association to a number of railroads asking for figures as to the detention of lumber for reconsignment during comparable periods before and after the penalty charge went into effect, respectively. May, 1916, and September, 1920, were selected as the most representative and normal months for the respective years. The following comparative statement of lumber traffic handled by 36 railway systems at their principal reconsigning points in May, 1916, and September, 1920, was compiled from the answers received:

	May, 1916.	Septem- ber, 1920.
Total traffic in cars.....	141,317	108,898
Total cars reconsigned.....	12,561	8,379
Total cars reconsigned prior to arrival.....	4,794	4,415
Total cars reconsigned first and second days following arrival or within free time.....	4,248	2,390
Cars delayed beyond free time for reconsignment.....	3,519	1,874
Total car-days that cars were held for reconsignment.....	26,599	12,045
Car-days in excess of free time that cars were held for reconsignment.....	24,153	5,705
Per cent of lumber traffic.....	100.00	77.05
Per cent of lumber traffic reconsigned.....	8.89	7.69
Per cent of reconsigned lumber traffic reconsigned while in transit or prior to arrival at reconsigning points.....	38.17	52.69
Per cent of reconsigned lumber traffic reconsigned the first and second days following arrival or within the free penalty time.....	33.82	28.53
Per cent of reconsigned lumber traffic delayed beyond the free penalty time for reconsignment.....	28.01	18.79
Average days delay per car to cars reconsigned after arrival at reconsigning points.....	4.72	3.01
Average days delay in excess of free time per car to cars that were delayed over the free penalty time.....	6.87	3.62
Number of cars of lumber unloaded at the principal stations on the lines reporting.....	11,795	11,551
Total car-days delay in unloading lumber at the principal stations.....	27,448	21,846
Average days delay per car in unloading lumber at the principal stations.....	2.33	1.89

While there was but a slight decrease in the percentage of cars reconsigned in 1920 as compared with 1916, there was a substantial increase in 1920 in the percentage of cars reconsigned in transit, and substantial decreases in the percentage of cars delayed beyond the free time and in the average delay of such cars.

A large volume of lumber moves through Cincinnati. Prior to the establishment of the penalty charge as many as 200 cars of lumber

were often held at that point for periods of from 1 to 20 days. In 1919 it became necessary on a number of occasions to lay embargoes on lumber consigned to move via that city. Since the penalty charge became effective there has been a material increase in the number of orders for reconsignment of lumber prior to its arrival. In 1916 only 15 per cent of the lumber had been reconsigned before it arrived at Cincinnati. Since the establishment of the penalty charge 65 per cent of the lumber has been reconsigned before it arrives. At Laurel, Mont., the penalty charge has materially decreased the holding of cars. Before the establishment of the penalty charge orders for disposition of the cars were seldom received prior to arrival, but after its establishment disposition orders were furnished on a majority of the cars before arrival.

It is much more difficult to hold reconsigned cars than cars which have been placed for delivery, since cars held in yards for reconsignment must be switched over and over again to get out other cars on which forwarding orders have been received. To hold cars in yards also congests the terminals and interferes with the prompt handling of other freight. If a shipper habitually delays cars for unloading at destination the carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment; if the shipper habitually delays loading cars the carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. Defendants urge that it is not feasible to deal with cars at the reconsignment point by embargo or refusal to furnish further cars, and that the only effective means of dealing with detention at the reconsignment point is by applying a penalty charge.

Representatives of the car-service division of the American Railway Association testified that the various extensions of the expiration date of the penalty charge, and the present schedule naming the charge without limitation as to its expiration, were published under their instructions after investigation had shown that lumber is practically the only commodity which abuses the reconsignment privilege. They refer to the frequent car shortages which have occurred in the past five or six years and state that while the penalty charge was established in the first instance, as an emergency measure on account of the car shortage then existing, they believe that it should be maintained permanently to assist in preventing car shortages in the future; that while there are a large number of idle cars at the present time, practically no new equipment has been added in the last two years; and that there is a large percentage of bad-order cars now on hand. They urge that with a decrease in the number of cars in the country, and with business generally in suspense and likely to increase in the near future, particularly in the building industry, it is essential to

conserve the car supply to the utmost and protect it by all practical means; and that a withdrawal of the charge would soon revive those conditions which made necessary its establishment.

In normal times of brisk lumber business interveners on behalf of defendants have difficulty in obtaining cars for direct shipments from the mills on account of the many cars of lumber billed to hold points for reconsignment. In times of car shortage cars held for reconsignment congest terminals and delay direct mill shipments. The penalty charge has relieved these conditions and they favor its continuance.

Complainants argue that the operators of the small mill, who are limited as to capital and credit, are unable to carry lumber in stock for long periods; that it is impossible for them to sell on credit; that their limited output will not warrant the heavy cost of a sales organization; that they are unacquainted with traffic matters and market conditions; that they must ship their lumber as soon as it is available and must realize their return quickly; and that therefore it is vital to the continuance of their business to have the right to reconsign without any restriction of that right by the imposition of a penalty charge when cars are delayed beyond a specified limit. Complainants also assert that the unrestricted use of the reconsignment privilege is beneficial to the small lumber retailer in that, by being able to purchase cars of lumber in transit, quickly available to meet his needs, he requires less capital and less yard space, and can maintain a better rounded as well as a smaller stock on hand, with less loss through fluctuations in price, than if compelled to purchase directly from the mills at distant points; and that with his limited capital the small retailer could not maintain a purchasing force to ascertain the financial rating and standing of small mills and, in the absence of the wholesaler upon whom he now relies for any contractual guaranty concerning the lumber, would be compelled to buy from the large mills or the large retailers at prices higher than prevail on transit lumber.

No evidence has been submitted to show to what extent the penalty charge has been applied on shipments made by members of complainants' association. A representative of a large wholesale firm testified that about 50 per cent of the lumber handled by his firm was shipped to a hold point for reconsignment, but that 90 per cent of these shipments were reconsigned before they reached the reconsignment point. His firm handled a large number of cars in 1920, but the penalty was applied on only six of its cars. That the penalty was applied on but few shipments may be due to the fact that this firm has extensive assembly yards and a large sales organization. We are not concerned with the method by which complainants' mem-

bers conduct their business. It may properly be pointed out that the placing of shipments in transit with the intention of selling them while they are on the rails of the carriers inevitably results in detention to some cars. The small mill is constantly tempted to put cars on the rails to secure an advance from the wholesaler, even though trade conditions are such that there is no possibility of disposing of the lumber within a reasonable time after the cars reach the hold point. When the shipment reaches the hold point and the market is rising, the wholesaler has an incentive to hold the shipment awaiting further advance in price. On a falling market the consumer defers purchase.

Complainants argue that since defendants established the transit arrangement and maintained it for a number of years without limit as to the time shipments might be held for reconsignment, and provided that freight may be reconsigned subject to demurrage charges which were and now are, to a certain extent, graduated, the carriers have recognized the right of a shipper to delay giving reconsignment instructions and to hold cars beyond the expiration of the free time.

A railroad's function is to move traffic. The furnishing of storage is not a primary function. The free time provided for loading, unloading, and reconsignment has been fixed as the reasonable time within which cars should be released and made available for further movement. The shipper has no inherent right to detain a car beyond the free time and thus prevent it from being used for transportation by other shippers. Car shortages have resulted in incalculable loss in the past both to the carriers and the shipping public as a whole, and when it appears that shippers detain cars for purposes other than those necessary for proper transportation the carriers are justified in taking steps to prevent such abuses.

We find that conditions existing at the time warranted the establishment of the penalty charge and that it was not unreasonable or otherwise unlawful. There is now a large surplus of serviceable empty cars, and generally speaking no congestion in the country. In the past car shortages at times have followed quickly upon periods of car surplus. It is impossible to forecast the continuance of present conditions, or what will be the conditions when the normal stride in business is reached. We are of the view that there is no justification for the charge at the present time and we find that while present conditions continue it is and will be unreasonable.

The respondents in the suspension case have justified the cancellation of the penalty charge.

It should be clearly understood that our approval of the elimination of the charge at this time is based solely on existing conditions,

and is not to be construed as an inhibition on the carriers to publish penalty charges in the future if and when conditions warrant.

There remains for consideration the proposal of the Chicago, Peoria & St. Louis Railroad Company to cancel the \$3 reconsignment charge on lumber when instructions are received prior to arrival of car, and to reduce the charge from \$7 to \$3 when instructions are received after arrival of car. Little evidence was produced with respect to the changes in reconsignment charges thus proposed. The charges of \$3 and \$7 now in effect are generally uniform on all railroads throughout the country and were approved by us in the *Reconsignment Case, supra*. This respondent's traffic manager testified that, in his opinion, the proposed charges were compensatory, but admitted that he had made no close study as to the service rendered under reconsignment. Upon the record before us we are of opinion and find that this respondent has not justified its proposed schedule.

By tariff effective September 6, 1921, the Toledo, St. Louis & Western Railroad Company made its charge for reconsignment of lumber at junction points \$3, irrespective of whether the instructions were received prior or subsequent to arrival of car, but the lawfulness of that tariff is not in issue in this proceeding.

The complaints in the subnumbers will be retained on our docket for the purpose of giving the complainants therein opportunity to present evidence, if they so desire, as to whether the charges collected were applicable under the tariffs.

Appropriate orders will be entered. Any applications by the carriers for permission to cancel the charge on less than statutory notice will receive consideration.

No. 10282.<sup>1</sup>

## SWIFT &amp; COMPANY

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA  
& SANTA FE RAILWAY COMPANY, ET AL.

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Submitted October 10, 1919. Decided February 13, 1922.

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Carload rates on pulled wool in the grease, in machine-pressed bales, from Chicago, Ill., to points in trunk line territory and New England found unreasonable. Rates not exceeding the contemporaneous rule-26 rates, minimum 32,000 pounds, prescribed for the future. Proportional rates and minima from Mississippi River crossings found not unreasonable. Reparation denied.

*R. D. Rynder, H. K. Crafts, and M. W. Manker* for complainants.

*R. R. Hargis* for Wilson & Company, intervener.

*Douglas Swift* and *D. T. Lawrence* for defendants.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

These cases present similar issues, were consolidated for hearing, and will be disposed of in one report. Exceptions were filed by complainants to the report proposed by the examiner, and we have reached conclusions differing from those which he recommended.

Complainants and intervener, Wilson & Company, are corporations engaged, among other things, in shipping wool. By complaints seasonably filed it is alleged that the rates applied on certain shipments of wool in the grease, in machine-pressed bales, in carloads, from Chicago, Ill., to Philadelphia, Pa., New York, N. Y., Boston, Mass., and various other named destinations in trunk line territory and New England, since September, 1916, were unjust and unreasonable to the extent that they exceeded the contemporaneous fourth-class rates, minimum 32,000 pounds; and that the through rates on similar shipments from South St. Joseph, Mo., and Kansas City, Kans., to said destinations were unjust and unreasonable to the extent that the components applied east of the Mississippi River or Chicago exceeded the fourth-class rates, minimum 32,000 pounds,

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<sup>1</sup>This report includes No. 10375, *Armour & Company v. Director General, as Agent, Atchison, Topeka & Santa Fe Railway Company, et al.*

contemporaneously maintained between the same points. Complainants and intervener ask for reparation and for the establishment of reasonable rates for the future.

Charges were collected on the shipments from Chicago on the basis of the applicable third-class rates, minimum 16,000 pounds. On certain of the shipments from South St. Joseph and Kansas City fourth-class rates, minimum 24,000 pounds, were applied to Chicago and third-class rates, minimum 16,000 pounds, beyond; the remaining shipments from these points were charged at fourth-class, minimum 24,000 pounds, to the Mississippi River crossings, plus proportional commodity rates, minimum 24,000 pounds, beyond, applicable on wool in the grease in sacks or in bales of a density less than 19 pounds per cubic foot. The Mississippi River combinations were lower than those based on Chicago, and defendants concede overcharges on shipments which were subjected to the latter basis.

The shipments consisted of pulled wool, i. e., wool pulled from the hide of dead sheep, as distinguished from wool shorn from live animals. Pulled wool contains less dirt and grease than sheared wool and is more valuable. The prewar value of pulled wool was about 40 cents per pound. During the war it was worth as much as \$1.25 per pound, and at the time of hearing, in February, 1919, from 60 to 80 cents per pound. The shipments made by Swift & Company in 36-foot cars averaged 26,369 pounds from Chicago and 29,229 pounds from South St. Joseph. Those made by Armour & Company averaged 29,422 pounds from Chicago and 33,021 pounds from Kansas City. Defendants show that the shipments from South St. Joseph and Kansas City combined averaged 28,414 pounds per 36-foot car, those from Chicago 26,945 pounds, and that all of the shipments concerned averaged 27,362 pounds. The weight of the bales ranged from 335 to 360 pounds each. It was testified that 90 bales can be loaded in a 36-foot car. The density of the wool varied from 12 to 16.5 pounds per cubic foot.

The third-class rating applied on the shipments from Chicago was established for general application within official territory following our decision in *Traugott Schmidt & Sons v. M. C. R. R. Co.*, 23 I. C. C., 684. We said in that case that within official territory wool in carloads might well take third-class rates, minimum 16,000 pounds. It had previously been rated second class, minimum 10,000 pounds. Complainants contend that this suggestion was based solely upon our consideration of facts relating to the transportation of wool in sacks and that we were probably not informed concerning the large movement of wool in machine-pressed bales which readily load in excess of 24,000 pounds per car. In the case cited the evidence showed that the weight of domestic wool in bags did not exceed

15,000 or 16,000 pounds per car. Our report does not indicate that we gave consideration to the rating on wool in machine-pressed bales.

In *Transportation of Wool, Hides, and Pelts*, 23 I. C. C., 151, 25 I. C. C., 185, 25 I. C. C., 675, hereinafter called the *Wool Investigation*, we recommended for the movement in western territory of wool in the grease, in sacks and bales, a less-than-carload rating of second class and a carload rating of fourth class, minimum 24,000 pounds per standard 36-foot car. These ratings were thereafter published in the western classification and are now in effect. On through shipments from western points to eastern destinations we found reasonable specific commodity rates to and from the Mississippi River and said, 23 I. C. C., 151, 176:

The rates so established may be named by the carriers either as joint through rates or as proportional rates up to and from the Mississippi River or any other point selected as the equivalent; but they should be applied only to an actual through movement and should not be applied when the traffic has been unloaded, taken possession of by the shipper, and rebilled from the intermediate point.

For wool in machine-pressed bales having a density of 19 pounds or more per cubic foot, minimum 32,000 pounds for 36-foot cars, these proportional commodity rates were approximately 15 per cent less than the corresponding rates on wool in sacks, minimum 24,000 pounds. West of the Mississippi River the proportionals on the latter wool were slightly lower than the fourth-class rates under the western classification, the proportionals on the machine-pressed bales being still lower by 15 per cent. East of the Mississippi River the proportionals on both classes of wool were somewhat higher than the fourth-class rates under the official classification, the latter being about 47 per cent of the first-class rates, while the proportionals on the wool in sacks and on the wool in machine-pressed bales were about 55 and 50 per cent, respectively. The rates so fixed from the Mississippi River to Boston, for example, exceeded the fourth-class rates by 7 and 2 cents, respectively. As aforesaid, the components applied east of the Mississippi River on the shipments from South St. Joseph and Kansas City under consideration herein were the proportional rates on wool in sacks or bales of a lesser density than 19 pounds per cubic foot, minimum 24,000 pounds.

In *Fox's Sons v. B. & A. R. R. Co.*, 49 I. C. C., 656, we found that the third-class rates, minimum 16,000 pounds, as applied to the transportation of South American and Australian imported wool in the grease, in machine-pressed bales, from Boston and New York to La Porte, Ind., were, and for the future would be, unreasonable to the extent that they exceeded or might exceed the fourth-class rates



contemporaneously in effect, upon a minimum not exceeding 32,000 pounds. The rates established in compliance with our order in that case were not restricted to import traffic. The shipments there considered consisted of sheared wool which defendants in this proceeding state was worth from 23.5 to 33 cents per pound; 8 of the shipments averaged about 37,750 pounds, and 21 cars from Boston averaged 27,598 pounds.

The reasonableness of the ratings on wool in official territory and of the proportional commodity rates on western wool from Mississippi River crossings to Boston was recently considered in *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 64 I. C. C., 365, hereinafter called the *Boston Wool Case*. We declined to prescribe fourth-class rates on wool in the grease, in carloads, for general application within official territory, and at page 372 said:

In our judgment the rating of third-class, minimum 16,000 pounds, is well suited to the wool produced in official territory, when shipped in bags or sacks; and the rating of fourth class, minimum 24,000 pounds, is likewise well suited to the wool produced in western territory when similarly shipped. Wool compressed to a high density in machine-pressed bales is entitled to relatively lower rates, but this is a matter which is provided for in western territory by the existing commodity rates, and which can and should be provided for in official territory, in the exceptional cases where it is practicable to ship in large quantities per car, by the establishment of similar commodity rates, following the precedent of *Fox's Sons v. B. & A. R. R. Co.*, *supra*.

Complainants in that case alleged that the proportional commodity rates from the Mississippi River crossings to Boston were unreasonable to the extent that they exceeded fourth class, minimum 24,000 pounds, on shipments in sacks, and 85 per cent of fourth class, minimum 32,000 pounds, on shipments in bales. We found that the present proportional rates were not unreasonable. As above stated, these rates are based upon those prescribed in the *Wool Investigation*. The relation of the present proportional commodity rates on wool from East St. Louis, Ill., to New York and Boston to the rule-26 and fourth-class rates is indicated below:

To—	Rule 26.	Fourth class.	Proportional rates.	
			(1)	(2)
New York.....	Cents. 98.5	Cents. 86	Cents. 98.5	Cents. 86.5
Boston.....	102.5	90	101.5	91.5

(1) In bags or in bales of less density than 19 pounds per cubic foot, minimum 24,000 pounds.  
 (2) In bales having a density of 19 pounds or more per cubic foot, minimum 32,000 pounds.

We find that the proportional commodity rates and minima applicable from Mississippi River crossings on shipments originat-

ing at Kansas City and South St. Joseph were not and are not unreasonable.

We also found in the *Boston Wool Case* that the proportional lake-and-rail rates on western wool in the grease from Duluth, Minn., to Boston and the proportional all-rail rates from Mississippi River crossings to Boston on wool in the grease originating at points in Texas were unreasonable to the extent that they exceeded 55 per cent of the contemporaneous first-class rates, minimum 24,000 pounds, subject to rule 34, for shipments in bags or sacks, and 50 per cent of first class, minimum 32,000 pounds, subject to rule 34, for shipments in machine-pressed bales.

The kind of wool herein considered originates in the far west. It contains more dirt and grease and consequently is heavier than the wool produced in official territory. Clearly the rates on such wool from Chicago should be lower than the third-class basis applicable throughout official territory which we have found appropriate for application on the lighter eastern wool; and they should bear a fair relation to the proportional commodity rates on western wool from the Mississippi River crossings. In the following table are shown the present first-class, rule-26, and fourth-class rates from Chicago to New York and Boston and rates based on the percentages of first class prescribed in the *Boston Wool Case*:

To—	First class.	Rule 26.	Fourth class.	Percentage rates.	
				(1)	(2)
New York.....	Cents. 157.5	Cents. 84	Cents. 73.5	Cents. 86.5	Cents. 79
Boston.....	164.5	88	77.5	90.5	82.5

(1) In bags or sacks, minimum 24,000 pounds, subject to rule 34, based on 55 per cent of first class.

(2) In machine-pressed bales, minimum 32,000 pounds, subject to rule 34, based on 50 per cent of first class.

In no case except *Fox's Sons v. B. & A. R. R. Co.*, *supra*, have we prescribed carload commodity rates as low as fourth class for application on wool in the grease within official territory. And, as already shown, the rates fixed in that case were not prescribed on purely local traffic. We have frequently held that proportional rates may properly be somewhat lower than the corresponding local rates.

Defendants urge that the local rates from Chicago to the east should be so adjusted that combinations on that point will not be lower than the joint rates or the Mississippi River combinations applicable on through shipments from western points, plus transit charges. The present transit charge is 3.5 cents per 100 pounds. The present difference between the fourth-class rates from Missouri River cities to 66 I. C. C.

East St. Louis and Chicago is 8 cents. Upon this basis the local rates from Chicago should be not less than 82 cents to New York and 87 cents to Boston upon wool in machine-pressed bales, minimum 32,000 pounds, and would approximate the present rule-26 rates.

We find that defendants' present rates on pulled wool in the grease, in machine-pressed bales, in carloads, from Chicago to the destinations named in the complaints, are and for the future will be unreasonable to the extent that they exceed or may exceed the rule-26 rates contemporaneously in effect from Chicago to the same points, minimum 32,000 pounds, subject to rule 34.

The question remains whether the rates from Chicago were unreasonable in the past. As we have seen, these rates have been maintained on the basis of third class for many years, and that basis resulted from our suggestion in *Traugott Schmidt & Sons v. M. C. R. R. Co.*, *supra*. Under the circumstances and upon the record herein, we find that the third-class rating and rates as applied on shipments made by complainants and intervener from Chicago are not shown to have been unreasonable in the past, and accordingly the prayer for reparation will be denied. An appropriate order will be entered.

66 I. C. C.

No. 11510.

TANNERS' COUNCIL OF THE UNITED STATES OF  
AMERICA ET AL.

v.

DIRECTOR GENERAL, AS AGENT.

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Submitted March 3, 1921. Decided February 11, 1922.

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Rate charged on imported pickled sheep skins, in carloads, from Pacific coast ports to Atlantic seaboard destinations found to have been applicable, but unreasonable. Reparation awarded.

*C. R. Marshall* and *Charles E. Bell* for complainants.

*John F. Finerty* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND POTTER.

*HALL, Commissioner:*

Exceptions were filed by complainants and defendant to the report proposed by the examiner, and the case was orally argued.

Complainants are an association organized to foster and develop the leather industry and seven importers of sheep skins having their principal places of business at Boston and Peabody, Mass., New York, N. Y., and Philadelphia, Pa. By complaint filed June 5, 1920, they allege that the fifth-class rate of \$2.375 charged by defendant on numerous shipments of pickled sheep skins, in carloads, minimum weight 36,000 pounds, from Pacific coast ports, including San Francisco, Calif., and Vancouver, British Columbia, to various destinations in Atlantic seaboard territory between June 25, 1918, and February 15, 1919, was unjust and unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded a commodity rate of \$1.25, minimum weight 36,000 pounds, contemporaneously applied on domestic shipments of sheep slats (green), in carloads, and subsequently established on imported pickled sheep skins. Reparation only is sought. Rates are stated in amounts per 100 pounds.

The sheep skins comprised in these shipments were imported from New Zealand and, prior to the armistice, were used entirely in the manufacture of leather jerkins for the army. In the spring of 1918 it was estimated that the supply of native skins would not be sufficient to meet the requirements of the army and encouragement was

given by various governmental agencies to the importation of skins from New Zealand. During the balance of that year and the early part of 1919 they moved in great volume. During 1918 one complainant received 14,000,000 pounds, averaging 49,607 pounds per car. From July 21, 1918, to February 3, 1919, 19,611,000 pounds arrived through the port of San Francisco.

In August, 1916, the carriers established an import commodity rate of \$1 on

Sheep Pelts, pickled, in barrels, minimum carload weight 30,000 pounds, applying from Pacific coast points to eastern territory. This rate, together with all other import rates, was canceled on June 25, 1918, pursuant to general order No. 28 of the Director General of Railroads. Some import rates were reestablished on July 1, 1918, but not that on pickled sheep pelts. On February 15, 1919, an import rate of \$1.25 became effective on

Hides, viz: Cattle, Goat, Sheep, green or green salted, in bundles, or pickled in barrels, Min. C. L. weight 36,000 pounds,

Rate named will also apply on Skins of Sheep, Lambs or Goats, pickled in barrels.

This rate was reduced to \$1.10 on May 29, 1919.

Contemporaneously with the \$1 import rate a domestic rate of \$1 applied from Pacific coast ports to eastern territory on

Hides (green), Cattle Tails (green), Pig Skins (green), Sheep Slats (green), and Sheep Pelts (green), in bundles, min. C. L. Wt. 30,000 lbs.

Gross weight at point of origin less three per cent for preservatives (but not less than net invoice weight) will apply, shipments, however, being subject to min. C. L. weight of 30,000 lbs.

The minimum weight was increased to 36,000 pounds on June 24, 1918, the rate to \$1.25 on June 25, 1918, by general order No. 28, and both were in effect on domestic shipments during the period of movement.

Complainants' main contentions are that defendant's failure to apply the latter rate and minimum weight on these import shipments resulted in overcharges, and that the rate assessed was unreasonable to the extent above indicated.

Some of the shipments were billed as pickled sheepskins and others as pelts. The tariff publishing the domestic commodity rate carried a rule providing that the rates therein were specific and must not be applied to analogous articles, but complainants insist that pickled sheepskins or pelts and sheep slats (green) are identical and that the same rate is applicable thereon. The western classification, which governed, under the heading "goat or sheep hides, pelts or skins, not dressed nor tanned" provided separate entries for "green or green salted" and "pickled."

Pickled sheep pelts or skins are closely analogous to sheep slats (green) and very similar in appearance but are not the same in the sense that, under the tariff rule, the rate on the latter would be applicable to the former. It appears to be undisputed that each is the skin of a sheep from which the wool has been removed. The difference between the two lies in the different results obtained from using different preservatives and different processes of preserving.

From a transportation standpoint a sheep slat (green) is the skin of a sheep from which the wool has been removed and on the flesh side of which, while still moist, salt has been sprinkled. Salt so applied is absorbed in the tissues and will preserve the skin from deterioration for about three weeks. After salting, the skins are folded into bundles for shipment. Hides so treated are accepted and known as green hides, and sometimes as green salted hides.

In pickling, the skin, after the wool has been removed, is put into a bath to remove the depilatory fluid and then immersed in a solution of water, salt, and sulphuric acid. After immersion for ten minutes the solution is strengthened and the skins remain in it for about three hours. They are then removed, drained, and graded, and in two or three days are ready to be packed for shipment. A skin so treated will be immune from decomposition, heating, and ordinary weather effects for at least two years. When ready for shipment the skins are folded into bundles of half a dozen or a dozen, put into casks, and generally trodden down for tight packing. The cask when filled is headed, but no brine is put in. Pickled skins can be shipped in bundles. Domestic skins are, but those imported are always in casks because of the packing requirements of the steamship lines.

Complainants assert that prior to the establishment of import rates on "pickled sheep pelts" import shipments of this commodity moved from the Pacific ports at the domestic rates applicable on "sheep slats (green)." The first shipments here in controversy were originally billed at this \$1.25 domestic rate and were subsequently further billed for the balance of the charges on the basis of the fifth-class rate. Such facts as these hardly constitute admission against interest. On the contrary, they tend to show discovery and correction of what defendant conceived to be errors. We find that the domestic rate on sheep slats (green) was not applicable on imported pickled sheepskins.

By reason of the packing in casks heavier loading of cars could be effected with less effort than if the skins had moved in loose bundles. Thus in one instance, referred to as typical, 78 casks, aggregating 78,000 pounds, were loaded into one car. In another, the shipment moved in a gondola car, which it could not have done without risk of damage if in bundles. A witness for one com-

plainant testified that it had never filed a damage claim on New Zealand pickled sheep skins in casks, but, in one season, had filed claims aggregating \$12,000 or more on sheep slats (green). Complainants accordingly urge that these imported skins should reasonably be accorded a rate even lower than the domestic rate on sheep slats (green). Complainants also introduced rate comparisons.

The former general freight agent of one of the transcontinental roads which participate in the transportation and the assistant general freight agent of another, as well as the former general freight agent of one of the delivering lines, testified that from a transportation standpoint there was no difference between imported pickled sheep skins and domestic sheep slats (green) which would warrant the application of a higher rate on the one than on the other. Neither the classification rating nor the level of the fifth-class rate, as such, is under attack.

Defendant contends that all domestic transcontinental commodity rates, including the rate of \$1.25 on sheep slats (green), were depressed because of water competition through the Panama Canal, and that the evidence fails to show that \$2.375 was more than a reasonable maximum rate. It appears that water competition through the canal influenced the measure of the domestic transcontinental rate on hides when originally established, but has not continued to exert any appreciable influence. One indication of this is the absence of any departure from the fourth section in the form of higher rates from intermediate points. It is a matter of common knowledge that there was little movement of coastwise traffic through the canal until after the reestablishment of the export commodity rate on February 15, 1919, partly because of a slide shortly after the opening of the canal, which for several months obstructed traffic, and because during the war vessels were withdrawn from the coastwise trade and were not returned thereto in any considerable number.

In *Transcontinental Rates*, 46 I. C. C., 236, we found in June, 1917, that water competition between the Atlantic and Pacific coast ports had ceased and ordered commodity rates on all but a few specified articles, both eastbound and westbound, to be revised in such manner as to bring them into accord with the long-and-short-haul provision of the act. Many increases in transcontinental rates resulted, but the rate on hides was not increased for the reason, as testified by the assistant general freight agent of one transcontinental line, that there were few tanneries on the coast and many of the hides would have been wasted unless transported to the east on low rates.

Of the seven complainant importers, three were dealers in sheep skins, and four tanners.

Defendant admits on brief that, if the rates are found unreasonable *per se*, the four tanners are entitled to reparation, but not the three dealers, because they did not bear the transportation charges.

It is testified that all imported sheep skins handled by two of the three dealers were bought for their own account and resold, and that in no instance did they act in the capacity of factors or brokers. A witness called by the third dealer, Booth & Company, testified that prior to the signing of the armistice that complainant bought the skins and resold them at government prices, paying and bearing the transportation charges, but that after the armistice it acted as factor for certain foreign consignors who are not complainants in this proceeding and charged back to them the freight charges. Powers of attorney executed by these foreign consignors after the complaint was filed, and purporting to authorize this complainant to collect any sums due them as reparation on shipments sold for them during 1918, were introduced in evidence over the objection of defendant.

During part of the period of movement the prices of sheep skins were fixed by governmental authority, with the result that the price at which the dealers or brokers could sell was limited to the cost of the skins in New Zealand, for which a maximum price was established, plus all transportation and other costs, plus an allowance of 5 per cent of the total for commission or profit. In some instances the prices received by complainants did not cover all of these items. In all instances where the skins were purchased by the tanners through brokers the prices paid were for the delivered articles. The transportation charges, as such, were paid and borne by the brokers except in the instances above noted, where sales were made on a commission basis after the signing of the armistice. Defendant contends that on such shipments complainants were not damaged, because they would not have received any more profit if the lower rates had been in effect, and that an award of reparation would permit profits in excess of those allowed by the government. Like contentions have been considered and rejected by us in numerous decisions.

In the complaint reparation is asked only on shipments made between June 25, 1918, and February 14, 1919, inclusive, on which complainant importers paid and bore the freight charges. The complaint was not subsequently amended. The powers of attorney hereinbefore mentioned were executed on various dates between June 12 and August 5, 1920, after the complaint was filed. Their introduction in evidence over defendant's objection can not be treated as equivalent to amendment of the complaint.



The consignors, who bore the freight charges, have filed no complaint with us within the period prescribed by section 206(c) of the transportation act, and are not before us as parties complainant. Reparation as to them must be denied. *Oden & Elliott v. S. A. L. Ry.*, 37 I. C. C., 345, 349; 57 I. C. C., 698.

Upon this record we find that the charges collected on shipments of imported pickled sheep skins from Pacific coast ports to eastern territory between June 25, 1918, and February 14, 1919, both inclusive, were unreasonable to the extent that they exceeded charges based upon the domestic commodity rate of \$1.25 per 100 pounds, in carloads, minimum carload weight 36,000 pounds, applicable from and to the same points on sheep slats (green). We further find that the complainant importers made shipments as described and paid and bore the charges thereon, except in those instances in which complainant Booth & Company acted for the consignors in making the payment; and that, except in those instances, they have been damaged and are entitled to reparation in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable. Complainants should comply with rule V of the Rules of Practice.

EASTMAN, *Commissioner*, dissenting:

While I agree that the charges upon the shipments in question should not have exceeded charges based upon the domestic commodity rate of \$1.25 per 100 pounds, I base this conclusion, not upon the theory that the charges collected were unreasonable to that extent, but upon the belief that the domestic commodity rate was applicable. It applied to "sheep slats (green)." The majority state that "a sheep slat (green) is the skin of a sheep from which the wool has been removed and on the flesh side of which, while still moist, salt has been sprinkled." In my opinion a "sheep slat (green)" is the skin of a sheep from which the wool has been removed, which has not been cured or tanned, and which has been treated, if at all, with only a temporary preservative. I can discover no warrant for restricting the temporary preservative to "salt." Certainly it is not so restricted in the note which is included in the domestic commodity tariff and which provides for the deduction from gross weight at point of origin of 3 per cent for "preservatives." Sheep slats treated with salt and with the sulphuric-acid solution were exhibited at the oral argument and were indistinguishable in appearance.

66 I. C. C.

No. 12352.

C. G. CHEVALIER

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted September 6, 1921. Decided February 10, 1922.*

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Rate on manganese ore, in carloads, from First Ford, Va., to Pittsburgh and Sharpsburg, Pa., found unreasonable. Reparation awarded.

*Harry S. Elkins* for complainant.

*John F. Finerty* and *J. C. Brooke* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. Our conclusions differ from those recommended by him.

Complainant mines manganese ore. By complaint filed February 21, 1921, he alleges that the rate of \$5.52 charged on 20 carloads of manganese ore shipped between March 3 and June 2, 1919, inclusive, from First Ford, Va., to Pittsburgh and Sharpsburg, Pa., was unjust and unreasonable to the extent that it exceeded \$4.50. The prayer is for reparation. Rates are stated in amounts per long ton.

First Ford is on the Narrows branch of the Norfolk & Western, 12 miles from Narrows, its junction with the main line.

The shipments moved over the Norfolk & Western to Circleville, Ohio, and the Pennsylvania beyond. Charges were collected at the applicable combination rate of \$5.52, composed of rates of 5 cents per 100 pounds, equivalent to \$1.12 per long ton, from First Ford to Narrows, Va., and \$4.40 beyond. Before the shipments moved complainant made application for a reduction in the rate, and on November 25, 1919, a joint rate of \$4.50 was established.

The distances from First Ford to Pittsburgh and Sharpsburg over the routes of movement are 570 and 580 miles, respectively. Based on the average weight of the shipments, 48.92 long tons, the earnings under a rate of \$4.50 would have been \$220.14 per car, 38.6 and 37.9 cents per car-mile, and 7.9 and 7.8 mills per ton-mile. This

rate compares favorably with other rates contemporaneously in effect on the same commodity in the same general territory for comparable distances. No evidence was offered by the defendant.

We find that the rate assailed was unreasonable to the extent that it exceeded \$4.50 per long ton; that complainant made the shipments as described and paid and bore the charges thereon; that he has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate found reasonable; and that he is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

66 I. C. C.

## INVESTIGATION AND SUSPENSION DOCKET No. 1432.

## STOPPAGE OF GOODS IN TRANSIT.

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*Submitted December 12, 1921, Decided February 10, 1922.*

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Proposed rule governing stoppage of goods in transitu found not justified.  
Suspended schedules ordered canceled.

*J. H. Mooers* for respondent.

*Glendy B. Arnold* for protestant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective November 1, 1921, respondent American Railway Express Company proposes to incorporate in its classification the following rule relative to stoppage of goods in transitu:

## STOPPAGE IN TRANSIT.

When shipper requests the Company to stop a shipment in transit (C. O. D. or otherwise), before delivery to the consignee, or to surrender same at point of shipment after receipt has been issued, shipper must be required to execute agreement for stoppage of goods in transit (Form 431), as follows:

In case the shipper is unknown or irresponsible, the Agent must require one or more well known and responsible sureties to sign with him.

## AGREEMENT—STOPPAGE OF GOODS IN TRANSIT.

Agent, American Railway Express Company at-----

The undersigned shipped by American Railway Express Company from  
----- on ----- 192\_\_, shipment consisting of -----  
-----, marked -----

Please use all available means to stop for ----- the above mentioned articles before delivery to consignee and (insert here disposition)-----  
----- and in consideration of your efforts in behalf -----  
hereby agree to pay all your charges and to indemnify AMERICAN RAILWAY EXPRESS COMPANY and yourself against, and to save said Company and yourself harmless from any suit or legal proceedings, loss, damage, liability, expense, counsel fees, cost and charges arising from or caused by your complying, or attempting to comply with this request.

The meaning or intent of this agreement being that you are to act as  
----- agent in this transaction, but are not to be liable for failure to stop the above mentioned property.

(To be signed by person or firm shipping, and sealed with wax or wafer.)

----- [L. S.]  
----- [L. S.]

Upon protest of the St. Louis Chamber of Commerce, the schedules were suspended until March 31, 1922.

In defense of the rule respondent states that frequently it is doubtful whether a consignor has the right to stop goods; that in such cases, instead of refusing to comply with the notice or demand, it may require a reasonable time to investigate the matter; that if it does not choose to assume responsibility for delivery to either consignor or consignee, it may resort to legal proceedings to have the question determined; and that this procedure might result in serious delays and consequent losses and depreciation in the value of shipments.

To protect themselves against these hazards and delays, express companies for about 15 years have carried in their books of rules and regulations a rule which required shippers desiring to stop traffic in transitu to execute an indemnity agreement substantially the same as that proposed in the suspended schedules. The proposed publication in the classification is to fully advise all patrons of the requirement, although respondent expresses doubt whether section 6 of the act requires or permits the filing of this rule as part of the classification. The right of stoppage in transitu exists independent of statute and can not be added to or curtailed by anything in the carrier's tariffs.

Respondent contends that the dispute over the right of possession, if any arises, is one between the consignor and the consignee in which the carrier has no direct interest, and that it may properly require such an agreement from the shipper under the circumstances.

Protestant's chief contention is, in effect, that the right of stoppage in transitu is one that a carrier can not restrict, and that the requirement that a shipper enter into a contract of indemnity in the form proposed as a condition precedent to his right to stop is both unlawful and unreasonable.

Under the proposed rule respondent's agent may, if he has doubts as to the financial responsibility of a consignor, require that one or more well-known and responsible sureties sign the agreement of indemnity. This clause should be condemned for its indefiniteness as to the number of sureties required, if for no other reason. It also reposes too much arbitrary power in respondent's agents to decide who is or is not "responsible." Furthermore, compliance with this provision might require considerable time and result in loss of the right to stop because of delivery at destination.

The proposed agreement would apparently save respondent harmless from nearly every kind of loss or damage incident to the stoppage of goods, including those which it might have avoided. It makes no exception where failure to stop is due to the negligence of

respondent or its agents and might be construed by shippers as an absolute waiver of their right to prosecute claims arising from such negligence.

In the last paragraph of the proposed agreement is the following: "After execution of this indemnity agreement, Agent *may* give the required instructions; \* \* \*" [*italics ours*]. Such terms are inconsistent with recognition by respondent of any duty to obey the order to stop.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation.

66 I. C. C.

No. 10511.<sup>1</sup>

WESTERN PETROLEUM REFINERS ASSOCIATION

v.

DIRECTOR GENERAL, ALABAMA & VICKSBURG  
RAILWAY COMPANY, ET AL.

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*Submitted December 4, 1919. Decided February 21, 1922.*

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Reasonable maximum rates prescribed on petroleum and its products from the Burkburnett and Ranger groups in Texas and from Shreveport, La., to Kansas City and St. Louis, Mo., and other points.

*Clifford Thorne, Ralph Merriam, Fred W. Lehmann, jr., and Fayette B. Dow* for complainant.

*C. S. Burg, F. E. Andrews, J. N. Davis, and H. G. Herhel* for defendants.

*E. M. Hinkle* for Louisiana Oil Refining Corporation; *J. D. Fields* for the Caddo Oil & Refining Company of Louisiana; and *Ed. P. Byars* for Texas Petroleum Refiners Association, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS MEYER, HALL, AND EASTMAN.

HALL, *Commissioner*:

Exceptions were filed by all parties to the report proposed by the examiners. Our conclusions differ from those recommended by them.

Complainant, an association of producers, refiners, and shippers of crude petroleum and its products, assails the rates on those commodities, in carloads, from points in the states of Texas and Louisiana to points in various other states. It alleges that this entire rate structure is unjust and unreasonable, that the rates are unduly prejudicial to complainant and its members and unduly preferential of competing shippers in relation to and as compared with the rates contemporaneously maintained from other and similar points of origin in Texas, Louisiana, Kansas, Oklahoma, and Missouri to destinations in the United States, especially to those named in agent Leland's I. C. C. No. 1217, and further, that the rates assailed are in violation of section 10 of the federal control act. We are asked to prescribe just and nondiscriminatory rates. Leland's I. C. C. No. 1217 names rates from Arkansas, Louisiana, and Texas to destina-

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<sup>1</sup> This report also embraces No. 10551, Northland Oil Company et al. v. Director General, Atchafalaya, Topeka & Santa Fe Railway Company, et al.

tions in 26 states and in Canada. At the hearing complainant excepted destinations in Arkansas and Louisiana. It also abandoned its assault upon rates to the lower Mississippi River crossings and accordingly rates to southeastern points, which are usually made by combination upon those crossings, will not be considered.

The rates to points in central territory are also attacked in the complaint. These are largely made by combinations of proportional rates made on the Mississippi River and Chicago, a few on the Ohio River. At the hearing it was stated for complainant that only the factors up to the rate-breaking points are attacked.

The allegations of the complaint apparently embrace rates from all producing fields and refineries in Texas and Louisiana, but the evidence was confined to the rates from producing and refining points in what are known as the Burkburnett and Ranger fields in northern Texas and the Shreveport district in northwestern Louisiana.

We may therefore state in general terms that the rates now before us for review are those on petroleum and its products, as defined in the current western classification, from producing and refining points in northern Texas and the Shreveport district in Louisiana to points in Oklahoma and Kansas; to Missouri River cities, such as Kansas City, Omaha, and related points; to Mississippi River crossings, such as St. Louis, Hannibal, Keokuk, Dubuque, and Burlington; to Chicago; to points in southwestern Missouri and northeastern Kansas intermediate between the points of origin and St. Louis and Kansas City; and generally to the points in western trunk line territory to which rates were established from refineries in the mid-continent field following *Midcontinent Oil Rates*, 36 I. C. C., 109, hereinafter referred to as the *Midcontinent Case*.

At the hearing the Shreveport Chamber of Commerce and several oil companies, representing producers and refiners in northwestern Louisiana, and the Texas Petroleum Refiners Association, representing Texas producers and refiners, were allowed to intervene in support of the complaint.

Throughout this report rates will be stated in cents per 100 pounds and, except as otherwise indicated, are those in effect on August 25, 1920, herein termed "present rates."

According to the record the first discovery of oil in Texas was made near Corsicana. The production of that field was nearly all consumed within the state. Later a large production developed in the vicinity of Beaumont and at other points along the Gulf coast. The first interstate rates on petroleum from Texas were published from points in the Beaumont field to points in Oklahoma and to a few rate-breaking points such as Kansas City and St. Louis. From time to time, as oil was discovered in other parts of the state and



the Shreveport district and refineries were constructed, defendants generally applied the Beaumont rates. The result is that the present rates are in a chaotic condition. For example, from Gainesville, Tex., the rate on refined petroleum to Kansas City, 451 miles, is 39.5 cents, the same as to Chicago for at least twice the distance. To intermediate points such as Fort Scott, Kans., and Joplin, Mo., the rate is 47.5 cents. To Duluth, Minn., it is 46.5 cents. From Shreveport to Kansas City the rate is 13 cents higher on refined petroleum and 2 cents higher on crude than to St. Louis, although the distances are practically the same. In many instances there are no commodity rates from Texas points to northern markets.

Defendants did not attempt to defend or justify the present adjustment as a whole. They concede that the rates attacked are not properly adjusted and that readjustment is desirable and indeed necessary for both shippers and carriers.

In the *Midcontinent Case* we had under review rates on petroleum and its products from refineries in the midcontinent field to all important points in western trunk line and trans-Missouri territories as well as to other points. We prescribed reasonable rates to certain key points, and the carriers in establishing these rates made them applicable to groups some of which were prescribed or approved by us. All parties agree that the readjustment sought should be founded upon the adjustment prescribed by us in the *Midcontinent Case* as subsequently established by defendants. The principal competition of the Texas refiners is with refineries in the midcontinent field, and it is their custom to make and quote prices with reference to prices at Tulsa, Okla.

Before considering the several issues the evidence introduced by complainant and interveners, which bears on all issues and is of the same general character as that in other cases covering petroleum rates in the same general territory, may be summarized as follows: Complainant's members compete with refineries of the Standard Oil Company located at strategic points throughout the country, which secure their crude oil through pipe lines at a transportation cost much lower than the rail rates, and which thus have a decided advantage in the distribution of petroleum and its products at the important centers of consumption. If relatively low rates are not established upon crude oil an ever-increasing volume will move through the pipe lines, thus depriving defendants of revenue. Complainant's members furnish tank cars, the cost of which has increased in recent years, for the movement of their products, and receive a mileage allowance from defendants which is inadequate to cover maintenance, depreciation, cost of operation, taxes, and a reasonable return upon the investment. The value of petroleum and

its products is less than the average value of all carload freight. Loss and damage claims are insignificant. Ton-mile and car-mile earnings are greater than the earnings on all freight traffic handled by defendants. Fuel oil competes with coal, the rates on which are relatively lower. At the time of the hearing the oil industry was in a depressed condition because of conditions following the war and necessitating the storage of great quantities of oil.

I. GROUPING OF PRODUCING AND REFINING POINTS IN THE BURKBURNETT AND RANGER FIELDS.

The rates from north Texas points are arranged in two groups. One, including Burkburnett, Wichita Falls, Iowa Park, Electra, Dallas, Fort Worth, and others, will be termed the Burkburnett group. The other, including Ranger, Eastland, Cisco, Brownwood, and others, will be termed the Ranger group. Rates on refined petroleum from the Ranger group are generally 3 cents higher than those from the Burkburnett field. To points in Oklahoma the difference is 5 cents. Crude-oil rates from the Ranger group to Oklahoma points and to Kansas City are 2.5 cents higher than the rates from the Burkburnett group. Rates from points in the Ranger group have, as a general rule, always been higher than those from points in the Burkburnett group, and in making readjustment defendants propose to maintain that basis.

Complainant proposes that the two groups be combined and that the same rates apply from both. This is vigorously opposed by the Texas intervener and by defendants. The proposal is based upon the contentions that, on account of competition, all producers and refiners in this general territory should be on the same basis; that the combined group would be less in extent than the so-called Dallas-Fort Worth group, which is used in making rates to and from Missouri River points, less than the present Shreveport-Beaumont group, and less than the midcontinent group, used by us in prescribing rates in the *Midcontinent Case*, as subsequently enlarged by the voluntary action of the carriers. At present, rates on refined petroleum from all points in Texas except those in the Ranger group are generally blanketed.

In the *Midcontinent Case* we said that the average distance to St. Louis from the Kansas group was 394 miles and from the Oklahoma group 448 miles, a difference of 54 miles. The rate to St. Louis had been the same from both groups for many years and we said:

The defendants have made no showing that justifies a higher rate to St. Louis from the Oklahoma group than from the Kansas group. It is asserted that the difference in the average distances warrants the higher charge from the latter group. The difference is but 54 miles, which is not great in view of the average haul of over 400 miles and in view of the volume of the move-

ment and of the general conditions surrounding the traffic. \* \* \* The increase in production has also materially added to the tonnage transported by the defendants.

This of course would be very persuasive if we were dealing with a similar situation, but the one before us differs in many material aspects.

The following table shows producing and refining points in both groups referred to in the record, together with the short-line distances to St. Louis and Kansas City. Short-line distances were used in the *Midcontinent Case* and will be used throughout this report unless otherwise indicated.

From—	To St. Louis.	To Kansas City.	From—	To St. Louis.	To Kansas City.
Burkburnett.....	717	520	Ranger.....	773	602
Electra.....	730	533	Cisco.....	793	622
Iowa Park.....	714	517	Eastland.....	783	612
Wichita Falls.....	703	506	Abilene.....	839	658
Gainesville.....	622	451	Brownwood.....	819	649
Sherman.....	593	422	Coleman.....	850	679
Fort Worth.....	678	507	DeLeon.....	781	610
Dallas.....	658	486			
Corsicana.....	693	539	Average <sup>1</sup> .....	805	633
Average <sup>1</sup> .....	679	498			

<sup>1</sup> Average distance from all points to St. Louis, 734 miles; from all points to Kansas City, 557 miles.

As thus computed the average distance to St. Louis from the Burkburnett group is 679 miles and from the Ranger group 805 miles, a difference of 126 miles. The average from both groups is 734 miles. To Kansas City the difference is more marked. From the Burkburnett and Ranger groups the average distances are 498 and 633 miles, respectively, a difference of 135 miles, and the average from both groups is 557 miles.

In the *Midcontinent Case* we said:

Generally speaking, these Kansas and Oklahoma points have taken the same rates to St. Louis for a long period of time. Refineries have been located with reference to the group arrangement, and business conditions are adjusted to the relationship of rates; a change in the relationship should not therefore be made upon any light or transient considerations.

Like consideration of historical development would lead us to the conclusion that rates from the Ranger group should be somewhat higher than those from the Burkburnett group. They have always been higher; refineries have been located with some reference to the adjustment; the capacity of the refineries in the Burkburnett group is much greater than in the Ranger group, as there are several large refineries at or near Fort Worth and Dallas; and business conditions, to some extent at least, have been adjusted to the relationship in rates since the price of oil has been and is made with reference to

that obtaining in the midcontinent group, of which Tulsa is representative. The difference in mileages between the two groups is more marked to points in the midcontinent group because of the shorter hauls, as will later appear.

The record does not convince us that the two groups should be combined.

## II. RATES ON REFINED OIL FROM BURKBURNETT AND RANGER GROUPS TO KANSAS CITY, ST. LOUIS, AND BEYOND.

These rates from Burkburnett and Ranger, representative points in the groups, to Kansas City are 39.5 and 42.5 cents, and to St. Louis 34.5 and 37.5 cents, respectively. All parties are hopelessly divided as to the proper method of arriving at just, reasonable, and non-prejudicial rates from these groups. The only point on which all agree is that the difference found proper in the *Midcontinent Case* between the rates to certain key points should inhere in the rates to be prescribed to Kansas City and St. Louis. Complainant's proposal, as stated by its counsel at the hearing, may be summarized as follows: Establish from both groups to the midcontinent group a rate of 17.5 cents on crude oil; to Kansas City make it 2 cents higher, or 19.5 cents; to St. Louis 5 cents over Kansas City, or 24.5 cents; and to Chicago 5 cents over St. Louis, or 29.5 cents; and to the points named let refined oil take 5 cents over the crude-oil rates. The crude-oil rate to the midcontinent group would thus be made the base rate. And herein lies the fundamental difference which divides complainant from the Texas intervener and defendants. The drastic nature of complainant's proposal may be realized when it is recalled that, for an average distance of 412 miles from the midcontinent group to St. Louis, we prescribed a rate of 15 cents on crude oil, later increased to 19.5 cents by the Director General. For an additional haul of 355 miles, as complainant figures the average distance from both Texas groups to the midcontinent group, it would allow the defendants 5 cents.

Defendants and the Texas intervener are in substantial accord on these points: That rates should be prescribed first on refined oil, then on crude oil; that rates from north Texas should be made with relation to and in harmony with those prescribed by us in the *Midcontinent Case* from the midcontinent group; that such rates should be based upon reasonable differentials over the rates from the midcontinent group; that there are no circumstances or conditions south of the midcontinent group which would justify higher rates, distance considered, from the Texas groups than from the midcontinent group; and that therefore the ton-mile earnings to the same destinations should be less from the Texas groups than from the midconti-

nent group. They also agree, and the record establishes the fact, that the voluntary enlargement of the midcontinent group since our decision has increased the average distance and consequently decreased the ton-mile earnings from points in that group.

They differ over defendants' contention that the rate on refined oil to Kansas City should be the base rate. From Burkburnett defendants propose rates of 30 and 35 cents to Kansas City and St. Louis, respectively, as against the present rates of 39.5 and 34.5 cents, respectively. The Texas intervener contends that the rate on refined oil to St. Louis should be the key rate to the whole adjustment and proposes rates from Burkburnett of 23.5 and 28.5 cents, respectively.

In the following table car-mile earnings for refined oil have been based on a loading of 59,000 pounds. One of complainant's exhibits shows that the average loading of over 4,000 carloads of crude oil was in excess of 66,000 pounds. As the minimum weight is the gallonage capacity of the tanks at 7.4 pounds per gallon for crude oil and 6.6 pounds per gallon for refined, it can be estimated that refined oil will average about 59,000 pounds to the tank-car load.

	Average distance.	Rate.	Car-mile earnings.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>
To Kansas City from—				
Kansas group 2.....	150	14.5	57	19
Oklahoma group 3.....	251	19.5	45.8	15.5
Burkburnett.....	488	39.5	46.8	15.8
Ranger.....	633	42.5	39.6	13.4
To St. Louis from—				
Kansas group 2.....	394	24.5	36.7	12.4
Oklahoma group 3.....	448	24.5	32.3	10.9
Both groups.....	412	24.5	35	11.9
Burkburnett.....	679	34.5	29.9	10.2
Ranger.....	805	37.5	27.5	9.3

For convenience the present and proposed rates are set forth in the margin:

Haul.	Present rate.	Proposed by—			
		Com- plain- ants.	Defend- ants.	Texas inter- vener.	Exam- iners.
<i>Refined oil.</i>					
To Kansas City from—	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Burkburnett.....	39.5	24.5	30	23.5	26.5
Ranger.....	42.5	24.5	36.5	26.5	30.5
To St. Louis from—					
Burkburnett.....	34.5	29.5	35	28.5	31.5
Ranger.....	37.5	29.5	41.5	31.5	31.5
<i>Crude oil.</i>					
To Kansas City from—					
Burkburnett.....	23.5	19.5	27	21	23.5
Ranger.....	26	19.5	32.5	23.5	27
To St. Louis from—					
Burkburnett.....	29.5	24.5	31	28	25.5
Ranger.....	32	24.5	37	28	28

It will be noted that the differential of Burkburnett over Oklahoma group 3 proposed by the Texas intervener is only 4 cents for an average additional haul of 233 miles. It says 215 miles, but on either basis the differential of 4 cents is indefensible. It contends that the differential for this additional haul should be in proportion to the 5-cent differential of Chicago over St. Louis prescribed in the *Midcontinent Case*. This would result in the same rates, mile for mile, in Texas as in Illinois. A proposal so obviously unfair need not be pursued further, except to point out that the Chicago rate applies to territory stretching south almost to the gates of St. Louis. Speaking of the rate to Chicago in the *Midcontinent Case*, we said:

It is proposed by the defendants that the rate to Chicago shall apply also to a territory in eastern Illinois and western Indiana extending south from Lake Michigan, a few miles east of Whiting, to St. Louis territory; extending north from that territory, about 30 miles east of Springfield, to a point east of Peoria, and thence northeast to the lake. To points in this territory the defendants propose that the rates shall be the same as to Chicago, with the combination on East St. Louis or St. Louis as a maximum. We see no reason why this extension of the Chicago rates may not be approved.

We found that a rate of 25 cents, 5 cents over the St. Louis rate, would be a reasonable maximum rate "to Chicago, and to the territory now taking the Chicago rate and the territory proposed by the defendants in western Indiana and eastern Illinois." We estimated that the average distance to this group was 620 miles as against the average distance to St. Louis of 412 miles. Even under the Texas formula, if difference in the average distances be used, instead of the distance, Chicago from St. Louis, the result would be a differential of at least 5.5 cents.

Dealing with a somewhat similar contention in *Omaha Grain Exchange v. C., R. I. & P. Ry. Co.*, 53 I. C. C., 249, we said:

In so far as the attack upon the reasonableness of the rates on coarse grain from Omaha to the southwest is concerned, complainant relies largely upon the comparisons with rates for similar distances principally in western trunk line territory \* \* \*. It is well known that the level of rates not only on grain but on all traffic is much lower in western trunk line territory than in the southwest, and comparisons of rates to Texas with rates in that territory are not persuasive that the rates to Texas are unreasonable.

The 34.5-cent rate from the Burkburnett group to St. Louis is compared with rates prescribed by us in the *Midcontinent Case* and in *Wadhams Oil Co. v. Director General*, 57 I. C. C., 597, as increased by the Director General:

## From midcontinent field to—

Chicago .....	620 miles.	29.5 cents.
Milwaukee .....	719 miles.	32.5 cents.
St. Paul .....	685 miles.	35.5 cents.

## From group 3 to—

Omaha .....	449 miles.	27.5 cents.
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In *Winona Oil Co. v. Director General*, 57 I. C. C., 152, we found that a rate of 40.5 cents on petroleum and its products from the mid-continent group to Chippewa Falls, Eau Claire, and Menominee, Wis., had not been shown to be unreasonable. The distances and ton-mile earnings were as follows:

	Distance.	Ton-mile earnings.
To Chippewa Falls .....	814 miles.	9.9 mills.
To Eau Claire .....	801 miles.	10.1 mills.
To Menominee .....	788 miles.	10.3 mills.

Upon this record we find that the present rate of 34.5 cents on refined petroleum oil in tank-car loads has not been shown to be unreasonable, but that for the future 33.5 cents will be a reasonable maximum rate from the Burkburnett group to St. Louis.

All parties agree that the St. Louis rate should be 5 cents over the Kansas City rate as in the case of rates from Oklahoma group 3. On account of the greater haul and the fact that the average difference in distance from the Burkburnett group to Kansas City and to St. Louis is less than the difference from Oklahoma group 3 to the same points, it might seem that the difference in rates should be lessened. But this would place the Burkburnett group at a greater disadvantage in competing with Oklahoma group 3 at Kansas City than at St. Louis. To illustrate, if the rate to Kansas City were 3.5 cents less than to St. Louis, or 30 cents, the Burkburnett group would pay 10.5 cents over Oklahoma group 3 to Kansas City, and 9 cents over to St. Louis. We think that substantial justice will be done to all parties by placing the Texas groups on the same relative basis to all points as compared with Oklahoma group 3, from which they encounter their chief competition.

We find that the present rate from the Burkburnett group to Kansas City on refined petroleum oil, in tank-car loads, is and for the future will be unreasonable to the extent that it exceeds 28.5 cents.

From the Ranger group defendants propose to increase the present differential of 3 cents over Burkburnett group to 6.5 cents. In view of the long hauls and the conditions surrounding the transportation, the record does not justify an increase of more than 1 cent in the present differential for the difference in average haul, 125 miles to St. Louis and 146 miles to Kansas City.

We find that the present rate of 37.5 cents on refined petroleum oil, in tank-car loads, from the Ranger group will be a reasonable

maximum rate for the future to St. Louis, and that the rate to Kansas City is and for the future will be unreasonable to the extent that it exceeds 32.5 cents.

In the following table the present rates, those found reasonable, and the earnings thereunder are compared with the present rates from the midcontinent group:

	Average distance.	Present.		Found reasonable.	
		Rate.	Ton-mile earnings.	Rate.	Ton-mile earnings.
To St. Louis from—	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Oklahoma group 3 and Kansas group 2.....	412	24.5	11.9	<sup>1</sup> 24.5	11.4
Burkburnett group.....	679	34.5	10.2	33.5	9.9
Ranger group.....	805	37.5	9.3	37.5	9.3
To Kansas City from—					
Kansas group 2.....	150	14.5	19	<sup>1</sup> 14.5	19
Oklahoma group 3.....	251	19.5	15.5	<sup>1</sup> 19.5	15.5
Burkburnett group.....	498	39.5	15.8	28.5	11.4
Ranger group.....	633	42.5	13.4	32.5	10.3

<sup>1</sup> Found reasonable in *Midcontinent Case*, as increased by the Director General.

All parties have agreed that the rates to points beyond Kansas City and St. Louis should be graded in accordance with the groups adopted by us and the carriers following our decision in the *Midcontinent Case*. This is obviously the proper method and there is no need for discussion of the rates to such points. The rates prescribed in the *Midcontinent Case* to Milwaukee and Racine, Wis., have been modified as a result of our decisions in *Wadhams Oil Co. v. Director General*, *supra*, and *Petroleum Oil and Petroleum Oil Products*, 59 I. C. C., 499.

We find that the rates named below will be reasonable maximum rates for the transportation of refined petroleum oil, in tank-car loads, from the Burkburnett and Ranger groups:

To—	From Burkburnett.	From Ranger.
	<i>Cents.</i>	<i>Cents.</i>
Mississippi River points north of St. Louis and south of Keokuk.....	33.5	37.5
Keokuk, Iowa.....	34.5	38.5
Mississippi River points north of Keokuk, including Galesburg.....	36	40
Chicago, Ill.....	38.5	42.5
Milwaukee and Racine, Wis.....	41.5	45.5
Points in Chicago territory north of Chicago to which Chicago rates on traffic generally from west of the Missouri River now apply, including La Crosse.....	43.5	47.5
St. Paul, Minn.....	44.5	48.5
Winnipeg, Manitoba.....	77.5	81.5
Des Moines, Iowa.....	36	40
Omaha, Nebr.....	36.5	40.5
Sioux City, Iowa.....	41.5	45.5

The rates to key points above named will apply to all points in their respective groups heretofore established.



### III. RATES ON CRUDE, GAS, AND FUEL OILS TO KANSAS CITY, ST. LOUIS, AND BEYOND.

In the *Midcontinent Case* we prescribed rates on low-grade oils such as asphalt, asphaltum, road oil, and fuel oil to St. Louis and Chicago 5 cents lower than those prescribed on refined oils. The question of spread is presented again for determination in this proceeding. In *Pure Oil Co. v. Director General*, 56 I. C. C., 218, this question was gone into at length. There, as here, the examiner in a proposed report recommended that we prescribe rates on crude, gas, and fuel oils not to exceed 89 per cent of the rates on refined oils. The same character of evidence and the same arguments are now before us. Part of the record in the *Pure Oil Case* has been made part of the record in this proceeding. After reviewing the evidence and contentions in that case we said:

Following the *Midcontinent Case*, supra, rates on low-grade oils 5 cents lower than the rates on refined oils have been prescribed by us in various other cases involving the transportation of these commodities from points in the midcontinent field for substantially similar distances. *Fairmont Creamery Co. v. A., T. & S. F. Ry. Co.*, 43 I. C. C., 515; *Codington County Oil Co. v. A., T. & S. F. Ry. Co.*, 53 I. C. C., 234. Upon consideration of the record, we find nothing therein which convinces us that we should now depart from the methods of rate making with respect to these commodities heretofore applied by us, and adopt a new basis that relative weights alone should control without regard to other elements properly to be taken into consideration in establishing a relationship of rates.

The record in this proceeding does not justify any different conclusion.

We find that reasonable maximum rates on crude, gas, and fuel oils, in tank-car loads, from the Burkburnett and Ranger groups to Kansas City, St. Louis, and beyond will be rates 5 cents less than the maxima herein prescribed on refined oils.

### IV. RATES TO THE MIDCONTINENT FIELD.

One of the major interests of complainant's members is in the rates on crude oil to their refineries in the midcontinent field. The production in that field is declining. The production in Texas and Louisiana is increasing very rapidly. Refineries in the midcontinent field now find it necessary to draw on these new fields for their supply of crude oil in competition with the many refineries which have been and are being constructed there and with many existing and projected pipe lines.

The rate to refining points in the midcontinent group is 20.5 cents from the Burkburnett group and 23 cents from the Ranger group. Complainant's suggestion of a rate of 17.5 cents from both groups has been noted. The Texas intervener suggests a rate of 19 cents from the Burkburnett group and 22 cents from the Ranger group. Defendants propose a distance scale which is said to be substantially the same

as that applying on intrastate shipments in Oklahoma. They contend that for the relatively short hauls from Texas to Oklahoma points there should be no grouping, but under their proposed adjustment there would be an extensive blanket of refining points in Oklahoma and Kansas. They propose a rate of 27 cents from Burkburnett to Kansas City. Under the distance scale the 27-cent rate would be reached at 160 miles for joint hauls and at 230 miles for single-line hauls. The result would be that the 27-cent rate would apply as maximum to all intermediate points south of Kansas City extending as far back as Oklahoma City, approximately 350 miles.

Complainant vigorously opposes this distance scale. It says that such a system of rates would defeat the purpose of its complaint, which is to secure a basis of rates that will enable the midcontinent refineries to secure their supply of crude oil from Texas. It proposes instead that all north Texas points be grouped as well as points in the midcontinent field. We have not seen fit to group all points in north Texas, when shipping to St. Louis, Kansas City, and beyond, and no satisfactory reason appears why they should be grouped when shipping to Oklahoma and Kansas. In view of the fact that refineries in Kansas group 2 and Oklahoma group 3 take the same rate on their products to St. Louis, Chicago and beyond, complainant contends that to place them on a distance basis would disrupt the competitive adjustment. It points to the fact that oil is not accorded refining in transit.

From the record Burkburnett and Ranger may be said to be representative shipping points of crude oil within their respective groups. Complainant shows the average distance from Burkburnett to 21 refining points in Oklahoma group 3 as 288 miles and to 11 refining points in Kansas group 2 as 375 miles. The defendants show the average distance from Burkburnett to 13 refining points in Oklahoma group 3 as 288 miles. They do not show distances to refining points in Kansas group 2. The Texas intervener shows distances from Wichita Falls, a point near Burkburnett. Its average is considerably higher.

Complainant submits many comparisons to justify its proposed rate of 17.5 cents on crude oil from all points in the two Texas groups to all points in the midcontinent group for an average distance said to be 355 miles. The rate on crude oil established following our decision in the *Midcontinent Case*, as increased by the Director General, from Oklahoma group 3 to Kansas City for an average haul of 251 miles is 14.5 cents, yielding ton-mile revenue of 11.5 mills. A rate of 17.5 cents applied to an average haul of 288 miles from Burkburnett to Oklahoma group-3 points would yield ton-mile revenue of 12.1 mills. The distances submitted by the parties indicate that the average distance from all points in the Burkburnett group is somewhat greater than 288 miles.

In justification of their proposed rate of 27 cents defendants rely to a great extent on *National Petroleum Assn. v. M., K. & T. Ry. Co.*, 47 I. C. C., 355, where we prescribed rates on "oil, petroleum, and its products" from points in southeastern Kansas to seven points in Oklahoma. The rates there prescribed ranged from 12 cents for a haul of 81 miles to 26 cents for a haul of 267 miles.

But this particular southbound movement can hardly be compared with the northbound movement. The rates prescribed there were much higher than those prescribed in the *Midcontinent Case* for considerably longer hauls. Defendants' argument loses weight when it is recalled that they propose the same rate from Burkburnett to Oklahoma City, 177 miles, as to Kansas City, 520 miles.

Defendants' other comparisons with the fifth-class rates, and with commodity rates on bottles, fruit jars, iron and steel articles, and other commodities, are of little probative value.

On account of the relatively short hauls from the Texas groups to Oklahoma group 3 and Kansas group 2, and the considerable difference in the average distances to the latter two groups, we do not feel that substantial justice would be accorded to the refining points in Oklahoma group 3, where the bulk of the refining is done, by including them with points in Kansas group 2 on shipments from these Texas groups.

We, therefore, are of opinion and find that the rates on crude oil, in tank-car loads, from the Burkburnett group to points in Oklahoma group 3 and Kansas group 2 will be unreasonable to the extent that they exceed 17.5 cents and 20.5 cents, respectively, and from the Ranger group to the extent that they exceed 21.5 cents and 24.5 cents, respectively. Our finding is necessarily restricted to crude oil, as the record is silent as to the movement of gas and fuel oils to these groups.

The present rates on refined oil, in tank-car loads, from and to these groups are almost double those on crude oil. We find that they will be unreasonable to the extent that they exceed the maxima rates herein prescribed on crude oil from and to the same points by more than 5 cents.

Subsequent to our decision in the *Midcontinent Case* the defendants established rates from points like Drumright, Oklahoma City, Ardmore, and Enid, higher than those prescribed from the midcontinent group. On crude oil from Texas to these points complainant contends that in order to preserve the competitive adjustment the rates should be less than the rates to the midcontinent group by the same amounts as the rates on the refined oil to St. Louis, for instance, are greater than the rates from the midcontinent group. The rates on the outbound products from the Oklahoma points referred to are not before us in this proceeding and have never been

passed upon by us. Defendants propose to readjust them. The record is not sufficient to warrant us in prescribing rates from Texas to these points but defendants should have no difficulty in establishing rates which will result in a harmonious relationship to the rates prescribed in the *Midcontinent Case* and in this proceeding.

#### V. RATES FROM SHREVEPORT.

Oil was first discovered in northwestern Louisiana in 1907 and rates have been, generally, those applying from the so-called Beaumont-Port Arthur group, over 200 miles south of Shreveport. But in many instances the rates from Shreveport are lower than from Beaumont. The rates which interest the interveners are those applying from the Caddo, De Soto, and Red River fields, within a radius of about 40 miles from Shreveport. Most of the refining is done at or near Shreveport, which is near the center of production, and Shreveport is therefore fairly used as a representative point of origin by all parties. The distances from Shreveport to Kansas City and St. Louis, respectively, are 560 and 567 miles, and all agree that the rates to both points should be the same. To St. Louis the rate on refined oil is 26.5 cents, while to Kansas City it is 39.5 cents. The crude-oil rates are 21.5 cents and 23.5 cents, respectively. Shreveport wishes to retain the present rate to St. Louis and also apply it to Kansas City. It contends that the rates from Shreveport should not exceed the rates from the midcontinent group by more than 2 cents. Defendants propose a rate of 31.5 cents to both points.

The rate of 24.5 cents from the midcontinent field to St. Louis for an average distance of 412 miles yields ton-mile earnings of 11.9 mills. The rate of 26.5 cents from Shreveport for 567 miles yields 9.3 mills.

It is obvious that a 2-cent spread between the two groups for an additional haul of 155 miles is too narrow. The maxima rates of 28.5 and 32.5 cents, prescribed to Kansas City from the Burkburnett and Ranger groups, respectively, will yield 11.4 and 10.3 mills per ton-mile. The 31.5-cent rate proposed by defendants would yield 11.2 mills.

We find that the present rate on refined oil, in tank-car loads from Shreveport to Kansas City is and for the future will be unreasonable to the extent that it exceeds 30.5 cents, and that the same rate will be a reasonable maximum rate for the future from Shreveport to St. Louis. Rates to points beyond should be established in the same manner as rates from the Burkburnett and Ranger groups.

Rates on crude, gas, and fuel oils should be 5 cents less than those on refined oils. This will result in a rate on crude, gas, and fuel oils of 25.5 cents to St. Louis and Kansas City. In *Consolidated Oil Refining Co. v. K. C. S. Ry. Co.*, 53 I. C. C., 96, we found that

a rate of 22 cents applied on various carload shipments of crude petroleum forwarded during 1916 over various routes from Shreveport and Crichton, La., to East St. Louis, Ill., had not been shown unreasonable. This rate if increased by 4.5 cents as was done generally in modification of the rates increased under general order No. 28 would result in a rate of 26.5 cents.

The Shreveport interveners stated that their principal interest was in the rates to northern markets, such as Chicago, and introduced little evidence as to their rates to points in the midcontinent group. It is said that some of the midcontinent refineries can handle Louisiana crude valuable for its lubricant contents. The record affords no adequate basis for prescribing rates, but defendants should establish rates which will harmonize with those herein prescribed from the Texas groups to the midcontinent group.

Generally to points in official classification territory east of the Illinois-Indiana state line proportional rates are published on refined oil from the midcontinent, Burkburnett, Ranger, and Shreveport groups to East St. Louis, Ill., which are 2 cents lower than the local rates to St. Louis. This adjustment should be continued.

Our findings are to be understood as providing that to the amounts therein specifically named there shall be added the increases authorized in *Increased Rates, 1920*, 58 I. C. C., 220. No order will be entered at this time. It is expected that defendants will, within 90 days from the service of this report, establish rates observing the maxima herein found reasonable, subject to the increases authorized in the case last cited, and line up rates to intermediate points with those found reasonable to key points or groups of points. If defendants fail to do this the matter may be called to our attention for such further action as may then be found necessary.

NO. 10551.

In the complaint in No. 10551 rates on crude, gas, and fuel oil, and unfinished petroleum distillates, from points in Texas to Minneapolis and Willmar, Minn., are attacked. The complainants here were also complainants in *Pure Oil Co. v. Director General*, *supra*, where the same issues were raised except that the rates there attacked applied from points in the midcontinent field. A great part of the record in that case has been incorporated in the present record.

The rates prescribed in this report will remove the cause of complaint as to crude, fuel, and gas oils. The parties do not wish to litigate in this proceeding the issue as to unfinished distillates.

The complaint also seeks reparation, but the same complainants abandoned a similar prayer for reparation in the *Pure Oil Case*. Under the circumstances we take it that the prayer for reparation is abandoned here also. An order will be entered dismissing the complaint, without prejudice.

No. 11611.  
MULKEY SALT COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, WABASH RAILWAY  
COMPANY, ET AL.

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*Decided February 9, 1922.*

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Former report, 61 I. C. C., 669, finding shipments of salt, in carloads, from Detroit, Mich., to points in Virginia and Tennessee to have been misrouted, and awarding reparation, modified in part. Former order rescinded.

SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

BY DIVISION 3:

In our original report, 61 I. C. C., 669, we had under consideration 10 carload shipments of salt from Detroit, Mich., to Bristol, Tenn., and Roanoke, Richmond, Glade Springs, Petersburg, Clifton Forge, and Bluefield, Va., made in December, 1917, and January and February, 1918. The bills of lading directed routing over the Wabash and certain specified connections. Each contained a rate applicable to destination, but not over the specified route. Higher rates were applicable over the specified routes. The shipper's attention was not directed to the discrepancies between the rates and the routes. The shipments were forwarded over the Wabash and its connections, as designated, and charges were collected accordingly. In *Conf. Ruling 474 (c)* we held that when both a rate and a route are inserted by the shipper in the bill of lading and they do not coincide, it is the duty of the initial carrier's agent to ascertain from the shipper before forwarding the shipment whether he desires that the instructions as to the rate or the route shall govern. Following that ruling, we found that the shipments considered were misrouted, and that complainant was entitled to reparation from the Wabash Railway Company on the shipments made in December, 1917, and from the Director General, as Agent, on the shipments made in January and February, 1918. An order was entered on May 10, 1921, directing the Wabash to pay to complainant the sum of \$72.60, with interest, but the reparation due from the Director General could not be determined upon the record and it was suggested that complainant comply with rule V of 66 I. C. C.

the Rules of Practice as to those shipments. The reparation due from the Director General, as Agent, has not been paid. It does not appear of record whether payment has been made by the Wabash.

Upon reexamination of the applicable tariffs, we find that, under the rates inserted by the shipper in the bills of lading, the Wabash was not entitled to a line haul, but that these rates required movement out of Detroit over the Pere Marquette, Michigan Central, or New York Central, although provision was made for absorption of the switching charges of the Wabash.

In *McLean Lumber Co. v. L. & N. R. R. Co.*, 22 I. C. C., 349, we found that, where a shipper's bill of lading contains instructions as to both the rate and the route and the rate named is not applicable over any route of the receiving carrier, but is applicable over the route of a rival line to which the shipper might have delivered the shipment had he so elected, the receiving carrier may forward the shipment over its own line at the rate lawfully applicable, it not being obligated to turn the traffic over to its competitor. We there differentiated such cases from cases arising under *Conf. Ruling 214 (i)*, superseded by *Conf. Ruling 474 (c)*. In the light of our further consideration of the tariffs, it is apparent that the principle of the *McLean Case* is applicable and should govern as to the shipments made during December, 1917, and we now find that these shipments were not misrouted.

We have found informally that the principle of the *McLean Case* had no application where both of the carriers at point of origin were federally controlled, since the carriers were "being operated under a unified and coordinated national control and not in competition." *Federal Control Act*, 40 Stat. L., 451. The initial lines at Detroit above mentioned were all under federal control in January and February, 1918, and no reason appears for modification of our finding that the shipments which moved during these months were misrouted.

An order rescinding our order of May 10, 1921, will be entered.

68 I. C. C.

No. 12069.

GENERAL CHEMICAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CENTRAL OF GEORGIA  
RAILWAY COMPANY, ET AL.

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*Submitted September 3, 1921. Decided February 10, 1922.*

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Rate charged on bauxite ore, in carloads, from Republic, Ga., to Chicago Heights, Ill., found not unreasonable or otherwise unlawful. Complaint dismissed.

*J. D. Ross* for complainant.

*John F. Finerty, Royal McKenna, L. P. Day, and A. P. Humburg* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing chemicals at Chicago Heights, Ill., by complaint filed December 23, 1920, alleges that the rates charged on six carloads of bauxite ore shipped from Republic, Ga., to Chicago Heights between November 16 and December 6, 1918, inclusive, were unreasonable and in violation of sections 2 and 3 of the act to regulate commerce to the extent that the factors north of Cincinnati, Ohio, and Cairo, Ill., exceeded \$2.40. We are asked to award reparation. Rates will be stated in amounts per gross ton.

Bauxite ore is used by complainant to make sulphate of alumina, which is used in manufacturing paper and by municipalities for the filtration of water. At the time of hearing it was worth from about \$4 to \$5 per ton.

The shipments moved over the Central of Georgia to Chattanooga, Tenn., thence either over the Nashville, Chattanooga & St. Louis and the Illinois Central through Cairo to Matteson, Ill., and the Elgin, Joliet & Eastern beyond, or over the Southern to Cincinnati, and the Cleveland, Cincinnati, Chicago & St. Louis and the Elgin, Joliet & Eastern beyond. Charges on five of the shipments were collected at the applicable combination rate of \$6.70, composed of a commodity



rate of \$3 to Cairo or Cincinnati, and \$3.70, or 90 per cent of sixth class, beyond. The other car appears to have been undercharged 10 cents per gross ton. On August 10, 1919, a commodity rate of \$2.40 became effective from Ohio River crossings to Chicago Heights.

Complainant compares the \$6.70 rate for approximately 1,000 miles, yielding 6.7 mills per ton-mile, with joint commodity rates from Republic of \$5.10 to Detroit, Mich., 915 miles, and \$5.60 to Erie, Pa., 1,111 miles, and Buffalo, N. Y., 1,072 miles. The latter rates yield ton-mile earnings of 5.57, 5.04, and 5.22 mills, respectively. The \$5.40 rate to Chicago Heights in effect August 10, 1919, yields 5.4 mills. Complainant also compares the ton-mile earnings of 14 mills under the \$3.70 factor from Cincinnati to Chicago Heights with ton-mile earnings ranging from 5.6 to 8 mills from Cincinnati to Detroit, Erie, and Buffalo under the northern lines' divisions of the joint rates to those points, assuming that the southern lines receive as their divisions their joint rate to the river crossings.

Defendants show that rates ranging from \$6 to \$7.50, yielding ton-mile earnings from 5.22 to 6.25 mills, apply from Bauxite, Ark., the principal shipping point of bauxite ore, to Pittsburgh, Johnstown, Natrona, and Steelton, Pa., and Buffalo, 958 to 1,200 miles. These rates originally were influenced by Mississippi River competition between Memphis and Cairo.

Few shipments have been made from Republic to Chicago Heights and none were made for a year before these moved. No movement in the near future is contemplated.

We find that the applicable combination rate was not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 12332.

ARMOUR & COMPANY

v.

DELAWARE, LACKAWANNA & WESTERN RAILROAD  
COMPANY AND DIRECTOR GENERAL, AS AGENT.

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*Submitted September 12, 1921. Decided February 10, 1922.*

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Rates on fresh meat, in carloads, from freezer to plant at Jersey City, N. J., during federal control, found unreasonable. Reparation awarded.

*Paul E. Blanchard* for complainant.

*W. J. Larrabee* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation engaged in the packing-house business at Jersey City, N. J., alleges that the rates charged by defendants on 10 carloads of imported fresh pork, moved during September, 1919, from the freezer of the Eastern States Refrigerator Company, Jersey City, to complainant's plant at Jersey City, were unreasonable. We are asked to award reparation and also to prescribe a reasonable rate on interstate traffic for the future. Switching charges will be stated in amounts per car.

Both freezer and plant are within the switching limits of Jersey City and both are served by the Delaware, Lackawanna & Western, hereinafter called the Lackawanna. The plant is on Erie rails over which the Lackawanna has trackage rights. These shipments formed part of a cargo of dressed pork imported from South America, were unloaded from vessel at Brooklyn, N. Y., and, because of limited storage facilities at the plant, were placed in storage in the freezer. They were subsequently moved by the Lackawanna to the plant. No switching charge applied and charges were collected ranging from \$34 to \$38.51 per car on nine shipments at the minimum third-class rate of 17 cents per 100 pounds, carload minimum 20,000 pounds, and \$32.50 on the remaining shipment at the less-than-carload first-class rate of 25 cents per 100 pounds. These rates were increased on August 26, 1920, to 24 and 35 cents, respectively.

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When the shipments moved the Erie maintained a charge of \$5, increased August 26, 1920, to \$7, for switching between the plant and the Union Terminal Refrigerator warehouse on the Erie, which is about the same distance from the plant as the freezer.

Complainant contends that the charges assessed were unreasonable to the extent that they exceeded \$5 and that the charge for the future should not exceed \$7. It refers to a switching charge of \$7 maintained since August 26, 1920, by the Lackawanna on carload traffic placed for unloading at one of its yards within the switching limits of Hoboken, N. J., or Jersey City and switched to another yard within the same switching limits; also switching rates of \$5 in effect prior to August 26, 1920, and \$7 thereafter, maintained by the Erie between any two industries having private sidings, or between two sidings of the same industry, in Jersey City, Johnsonburg and Johnson City, Pa., or Towanda, N. Y. It also refers to the present switching charges ranging from \$7 to \$9 of the New York Central between points in Albany, Rochester, or New York, N. Y.

The freezer is 5,925 feet from the plant over the rails of the Lackawanna and Erie. When one or two empty cars are ordered, as was the case here, they are obtained near the icing platform and moved thereto by a switching crew for icing and precooling; they are then moved about 0.25 mile to Sixteenth street and switched back to about Fourteenth street where they are left, and later moved by a different switching crew to the freezer for loading. After loading the cars are switched to Fourteenth street, thence in the opposite direction to Sixteenth street and back to the icing platform where they are held for placement orders. When such orders are received the cars are moved by another switching crew through the Lackawanna's freight yards to the poultry yard, where they are usually set out, and later moved by another crew to complainant's plant. When the poultry yard is not congested, a rare occurrence, cars are handled from the icing platform to complainant's plant by one switching crew.

In making the above-described movement the loaded cars pass through two interlocking plants through the freight yards and over about 300 yards of main line of the Lackawanna. Their free movement is delayed by engine movements to and from the roundhouse just north of the freezer and by switching movements of the Erie at the plant. The Lackawanna asserts that the Jersey City terminal is the most congested portion of its entire system, and that by reason thereof charges for interplant or intraplant switching at that point are not published.

When the shipments moved the tariffs of the Lackawanna provided that traffic from Chicago, Ill., destined to ship side could be stopped

for storage in transit in the freezer at \$3 per car, increased to \$4 on August 26, 1920. The Lackawanna also maintained on freight requiring refrigeration a rate of 9 cents per 100 pounds, now 12.5 cents, from ship side in Brooklyn to both the plant and the freezer, a service which includes floating the cars from the ship to the docks of the Lackawanna at Jersey City; also a rate of \$4.50 per car plus 4.5 cents per 100 pounds, now \$6.50 and 6.5 cents, respectively, from the plant or the freezer and other points in Jersey City to ship side; but under neither of these rates is storage in transit at the freezer permitted on traffic from or to the plant.

Substantially all animal products and other commodities used by complainant at Jersey City originate either at Chicago and points west thereof or are imported through New York, and it is stated that about 99 per cent of the outbound products from the plant is exported. In the handling of this export and import business complainant has use for a large amount of cold-storage space, sometimes in excess of its own capacity, and desires to avail itself of space in the freezer. The domestic rates to ship side, New York harbor, also apply to the plant and to the freezer, and the rate from ship side to the plant applies also to the freezer. When any of this traffic is placed in the freezer and later taken to the plant, or is moved from the plant to the freezer for storage, the only rates available are the minimum class rates herein attacked. Complainant seeks the establishment of a reasonable switching charge to cover this service.

The question is presented whether the movement from the plant to the freezer or in the reverse direction, under the circumstances here disclosed, is interstate or intrastate. The Lackawanna contends that when delivery is made at either the freezer or the plant the interstate transportation has been completed and that a subsequent movement between these industries is purely intrastate and not within our jurisdiction, and cites *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S., 403. Complainant urges that substantially all traffic moved through either the plant or the freezer has been imported or is to be exported. A shipment moved between the plant and the freezer is not interstate in character unless in some way connected with an interstate movement. Complainant does not seek the establishment of reasonable interstate, export, or import rates from and to its plant at Jersey City, with the right of storage in transit at the freezer. We make no finding as to rate or charge for the future.

The charges on nine of these shipments, ranging from \$34 to \$38.51, and the charge of \$32.50 collected on the other shipment, were clearly too high. In view of the somewhat complex movement in-

volved we are of opinion that the charge should not have been less than \$15 per car.

We find that the rates charged on the shipments during federal control were unreasonable to the extent that they exceeded \$15 per car; that complainant made the shipments as described and paid and bore the charges thereon at the rates herein found unreasonable; that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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## INVESTIGATION AND SUSPENSION DOCKET No. 1450.

## CANCELLATION OF CLASS RATES FROM INDIANA TO OHIO DESTINATIONS VIA TERRE HAUTE, INDIANAPOLIS &amp; EASTERN TRACTION COMPANY.

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*Submitted December 17, 1921. Decided February 11, 1922.*

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1. Proposed cancellation of joint rates from Indianapolis, Ind., over the Terre Haute, Indianapolis & Eastern Traction Company and the Dayton & Western Traction Company to points on the Indiana, Columbus & Eastern Traction Company east of Dayton, Ohio, and points beyond on connecting lines, found not justified.
2. Proposed cancellation of joint rates from points on the Interstate Public Service Company and connecting lines to points on the Indiana, Columbus & Eastern Traction Company, and points beyond, found not justified.
3. Suspended schedules ordered canceled and proceeding discontinued.

*Homer C. Corry* for Indiana, Columbus & Eastern Traction Company, Columbus, Newark & Zanesville Electric Railway Company, Ohio Electric Railway Company, and their receivers; *F. D. Norviel* for Union Traction Company of Indiana; and *W. H. Latta* and *J. H. Croll* for Terre Haute, Indianapolis & Eastern Traction Company.

*H. B. McNeely* for Indianapolis Chamber of Commerce; *W. Albert Wilde* for Louisville Board of Trade; *Bert Weedon* for Interstate Public Service Company; and *Morgan J. Parlin* for Belknap Hardware & Manufacturing Company.

## REPORT OF THE COMMISSION.

## DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

By schedules filed to become effective December 12, 1921, respondents propose to cancel joint rates from Indianapolis, Ind., to points east of Dayton, Ohio, on the Indiana, Columbus & Eastern Traction Company and its connections, in effect over the Terre Haute, Indianapolis & Eastern Traction Company to Richmond, Ind., and the Dayton & Western Traction Company to Dayton. Under current tariffs traffic from Indianapolis to points east of Dayton may be routed at the same rates either over the aforementioned lines via Richmond or over the Union Traction Company to Union City, Ind., and the Indiana, Columbus & Eastern. The latter line extends from

Union City through Dayton and Springfield to Columbus, and from Springfield, through Lima, to Defiance, all in Ohio.

By schedules filed to become effective December 20, 1921, the Interstate Public Service Company proposes to cancel joint rates from Louisville, Ky., and other points on its own and affiliated lines to points on the Indiana, Columbus & Eastern and points beyond via Indianapolis and either the Union Traction or the Terre Haute, Indianapolis & Eastern.

Upon protest of the Terre Haute, Indianapolis & Eastern, the Indianapolis Chamber of Commerce, and the Louisville Board of Trade, the proposed schedules have been suspended until April 11, 1922.

The rates under consideration are class rates. The carriers concerned are all electrically operated railways, or, as commonly known, interurban lines. When through traffic arrangements with the lines out of Indianapolis were originally entered into, the Indiana, Columbus & Eastern and the Dayton & Western were operated by the Ohio Electric Railway Company. At the present time the various roads which comprised that company are operated individually and under separate receiverships. No changes are proposed in rates or routes from Indianapolis to Dayton. The purpose of the proposed cancellation of joint rates from Indianapolis is to give the Indiana, Columbus & Eastern, on traffic originating at Indianapolis and destined to points east of Dayton, a longer haul than it has on traffic which moves by way of Richmond.

The Terre Haute, Indianapolis & Eastern vigorously opposes the attempt to eliminate the joint rates by way of its line for the reason that it would be deprived of its principal freight traffic. Shippers at Indianapolis and Louisville, who appeared on behalf of the protestants, testified that the service of the Terre Haute, Indianapolis & Eastern is better than that of the Union Traction, and that at Indianapolis the terminal facilities of the former are more adequate and less congested at loading points than those of the latter.

The Indiana, Columbus & Eastern defends the proposed cancellations on the grounds that the routes through Union City are not unreasonably long and that, as the delivering carrier, it will secure greater revenues out of the longer hauls from Union City. It contends that under section 15(4) of the act we can not require it to continue to participate in through routes and joint rates via Richmond. This contention overlooks the fact that the primary question before us is the justification of the increased rates which will result through the substitution of combination rates for the joint rates now in effect via Richmond. These increased rates the carriers have not justified.

The instant case is clearly distinguishable from *The Ogden Gateway Case*, 35 I. C. C., 131. We there found that we could not prevent the cancellation of through routes and joint rates voluntarily established when the circumstances and conditions were such as would not warrant us in establishing such arrangements in the first instance. Here it is proposed to keep in effect materially lower rates by way of the longer route. In the case cited the reverse was true. The distances from Indianapolis to Dayton are 108.1 miles via Richmond and 143.5 miles via Union City. The difference of 35.4 miles is 19.3 per cent of the short-line distance from Indianapolis to Columbus, 183 miles, and 17.7 per cent of the distance from Indianapolis to Lima, 200 miles, the eastern and northern termini, respectively, of the Indiana, Columbus & Eastern. The difference in distance is of greater moment than if the hauls were by steam carriers, since speed and directness give electric lines their advantage over steam carriers in the transportation of package or less-than-carload freight, which is the chief freight traffic of these electric lines. The showing here made would justify establishment of through routes and joint rates via Richmond.

The evidence indicates that the schedules proposed by the Interstate Public Service Company and its affiliated lines are in the nature of a retaliation against the action of the Indiana, Columbus & Eastern in seeking to eliminate the routes through Richmond; further, that the proposed cancellation of the joint rates by way of Richmond is an outgrowth of the inability of the participating carriers to agree upon divisions. The shipping public must not be made to suffer because of a disagreement between carriers over divisions. The act prescribes a method for adjusting such controversies.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.



No. 11658.  
EZRA W. COOKE  
*v.*  
CHICAGO, BURLINGTON & QUINCY RAILROAD  
COMPANY.

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*Submitted November 21, 1921. Decided February 11, 1922.*

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Complaint praying for the issuance of an order under paragraph (21) of section 1 of the interstate commerce act requiring the Chicago, Burlington & Quincy Railroad Company to extend its line from Ericson to Chambers, Nebr.; *Held*, That the proposed extension is not reasonably required in the interest of public convenience and necessity. Complaint dismissed.

*H. S. Lower and Fred A. Wright* for complainant.  
*Kenneth F. Burgess and Bruce Scott* for defendant.

REPORT OF THE COMMISSION.

DIVISION 5, COMMISSIONERS AITCHISON, POTTER, AND LEWIS.

BY DIVISION 5:

Exceptions were filed by the complainant to the report proposed by the examiner.

The complaint herein filed by Ezra W. Cooke, acting for himself and some 200 other residents of Holt and Wheeler counties, Nebr., prays that we issue an order, under the provisions of paragraph (21) of section 1 of the interstate commerce act, requiring defendant to extend its line of railroad from Ericson, Nebr., to Chambers, Nebr.

The pertinent portion of section 1 is as follows:

The Commission may, after hearing, in a proceeding upon complaint \* \* \* require by order any carrier by railroad subject to this Act, party to such proceeding, \* \* \* to extend its line or lines: *Provided*, That no such \* \* \* order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension \* \* \* that the expense involved therein will not impair the ability of the carrier to perform its duty to the public.

The two conditions precedent, enumerated in the proviso of this paragraph, are closely associated. An order requiring a carrier to extend its line in the interest of public convenience and necessity, and involving as a necessary incident expenses which would impair the ability of the carrier to perform its duty to the public would be a con-

tradition. On the other hand, even though such proposed extension would not impair the ability of a carrier to perform its duty to the public, no order could be issued against a carrier requiring an extension of its line, unless such extension was reasonably required in the interest of public convenience and necessity. Both of the conditions must be satisfied precedent to the issuance of an order.

Chambers, a town of some 250 inhabitants, is located about 150 miles west of Sioux City, Iowa; 32 miles north of Ericson, the terminus of a branch line of the defendant which connects with the main line at Aurora, Nebr.; 22 miles south of O'Neill, Nebr., the terminus of a branch line of the defendant extending from Sioux City, Iowa. O'Neill is also on the line of the Chicago & North Western, hereinafter called the North Western. Fifty miles southeast of Chambers the Union Pacific has a terminus of one of its branch lines at Spalding, Nebr. Chambers is situated in a level territory about 20 miles square, colloquially referred to as Chambers Flats, the soil of which varies greatly in different sections. Most of this land is used for grazing beef cattle and for growing native hay. While the soil is not as fertile as that found in other parts of Nebraska, rye, oats, speltz, corn, fruits, and vegetables are grown and a considerable proportion of the land is adapted to the production of wheat, potatoes, tame grass, and other crops, which, however, are not grown for shipment, due, it is testified, to the lack of adequate transportation facilities. In times of declining prices, much of the native hay grown in this section is not cut, owing to the expense of getting it to market. The water supply is plentiful. The annual rainfall averages 23 to 24 inches. The country south of Chambers Flats between Ericson and Chambers, is generally adapted to agricultural development, although there are considerable stretches of unproductive sand dunes.

From information furnished by about one-sixth of the farmers residing within 8 miles of Chambers, complainant shows that of 137,649.5 acres of land owned by them 81,500 acres were fit for cultivation and 18,817 acres were under cultivation. In 1919, 145,470 bushels of corn were grown on the cultivated land. During the same year the freight shipments of these farmers aggregated 8,556,290 pounds inbound, and 26,584,071 pounds outbound. They also sold 364,934 pounds of butter fat. During 1920, 73,330 tons of hay were mowed, and 23,688 cattle, 2,780 horses, 4,196 hogs, and 531 sheep were raised. It is estimated that in 1920, with direct railroad transportation, they could have produced and shipped 17,155 cattle, 32,359 tons of hay, and large quantities of grain, poultry, butter, eggs, and other farm products.

The business of the Chambers section is transacted principally through O'Neill and other points on the North Western, because  
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these points are nearer to Chambers than is Ericson, and the roads leading to them are better than those to Ericson. Ordinarily the teaming rate from O'Neill to Chambers is 25 cents per 100 pounds, but during bad weather 50 cents per 100 pounds is charged.

As above indicated, Ericson is the terminus of a branch line which extends from Aurora, on the defendant's main line to Billings. From Palmer and Greeley Center, intermediate points, branches extend to Sargent and Burwell, respectively. These branch lines were constructed beyond Central City, a point 19.2 miles north of Aurora, by a subsidiary company, the Lincoln & Black Hills Railroad Company, in 1887 and 1888, with the exception of about 19 miles between Arcadia and Sargent, which was built in 1899. At the time of the original construction some additional surveys were made and grading done beyond the present termini of these three branches. Originally the branch from Aurora to Ericson was intended to terminate at O'Neill, passing a few miles east of Chambers. The projected line from Ericson was graded to Cedar City, a distance of 6.4 miles, but was thereafter abandoned. No further construction work has been done on these branches, although a number of extensions have been requested. In each instance, however, the management, after investigating the probable cost of construction, revenue yield, and expense of operation, determined that the expenditures required would not be justified by the results of operation.

Complainant urges that when the line projected from Ericson to O'Neill was abandoned many home seekers, who had settled in the vicinity of Chambers upon the assumption that the railroad would be constructed, were forced to relinquish their farms because facilities for transporting the products which they contemplated raising were inadequate; that the land which is adapted to agriculture was given up to ranching; that the construction of the branch to Ericson virtually gave to defendant a monopoly on railroad building in the Chambers section, and thereby imposed upon it, as a public duty, the moral obligation of providing reasonable transportation facilities for that territory; and that defendant's line is peculiarly adapted to the use of this section because it serves not only Omaha, Nebr., but also has direct lines to such primary markets as Chicago, Ill., St. Louis, St. Joseph, and Kansas City, Mo.

Defendant contends that if, under the law, this territory is entitled to rail transportation, it should not be required to construct the railroad; that O'Neill, on the North Western, a point through which complainants now transact the bulk of their business, is 10 miles nearer to Chambers than is Ericson; that from O'Neill to Omaha, at which point considerable of the produce of the Chambers section

is marketed, the distance is 197 miles via the North Western as compared with 211 miles from Ericson to the same point via defendant's line; that a line from Chambers to O'Neill would not involve difficulties of construction, and would traverse a more fertile country than would be encountered in building from Chambers to Ericson, and that while from Spalding, on the Union Pacific, a branch to Chambers would require the construction of 50 miles of track, the distance from Omaha to Chambers via that route would be 197 miles, as compared with 243 miles from Chambers to Omaha by way of Ericson. Its board of directors declined to authorize the construction of the extension sought, because they considered it would not prove a profitable undertaking. It estimates that the construction of the new line and necessary buildings which, based upon the cost of similar recent construction work by defendant in this general territory, would require an expenditure of \$1,198,270 or \$37,860 per mile of road, not including rolling stock. This estimate includes an item of \$78,000 to cover the cost of the right of way.

Complainant has secured and is willing to present to defendant, free of charge, deeds to a strip of land 2 miles wide covering 90 per cent of the distance, between Ericson and Chambers, from which a right of way 100 feet in width may be selected for the proposed railroad. In its exceptions to the report proposed by the examiner, complainant states that all the necessary right of way will be furnished defendant without cost. Complainant estimates that an expenditure of \$552,727 will be necessary for the construction of the extension by utilizing the old grade from Ericson to Cedar City. Defendant's witness testified that this grading is practically all gone, and in the event of the construction of a railroad would be of no value. This estimate does not seem to us to be adequate.

Based upon the gross revenues per mile of road of other branch lines in the same general territory, and the traffic possibilities of the Chambers section, defendant estimates that the gross freight, passenger, mail, and express revenues accruing to it on traffic to and from points on the extension would aggregate \$225,000 per annum; that based upon freight and passenger service daily except Sunday, the expense of train and station service, mechanical forces, section men, and water service on the new line, including wages, fuel, supplies, and depreciation of locomotives, cabooses, and passenger equipment, would total \$85,475.76 per annum; that repairs and renewals of rails, ties, bridges, stations, and telegraph lines, and state taxes would increase the expenses of operation to \$125,556 per annum, thus leaving \$99,444 per annum net, excluding the expense of

handling the traffic south of Ericson. Complainant urges that daily passenger service would not be necessary on the extension, and cites a statute of Nebraska under which defendant could not be required to operate such trains unless the extension earned in excess of 7 per cent. The substitution of daily combination freight and passenger service would reduce defendant's estimate for the cost of operation of the proposed branch by \$23,866.32 per annum.

The average operating ratio of defendant's system for the three years ended 1920 was 81.5 per cent. Upon the assumption that the operating expenses requisite to handle traffic to and from the proposed line would constitute 81.5 per cent of the estimated annual revenues of \$225,000, there would remain \$41,625 per annum, which, after deduction of estimated taxes, would produce railway operating income of \$29,661, a return of 2.48 per cent on the defendant's estimated investment in the proposed line, without any allowance for freight equipment to handle the additional business.

The revenues of the proposed line would accrue chiefly from traffic destined to and from points on other lines of defendant, the local traffic being negligible. Although the major part of these hauls would be on main and branch lines south of Ericson, on basis of mixed-train service the operating expenses and taxes of the extension would consume 45 per cent of the gross revenue derived from such movements. To pay 6 per cent on the estimated investment in the new line, merely, would require the assignment of 77 per cent of the gross revenue to it, thus leaving but 23 per cent of the gross revenue to pay for the remainder of the system haul.

The issuance of the order prayed for would require defendant to invest a large sum of money in an undertaking which at the outset would not be a financial success, and would not hold out hope for the future.

We find that the proposed extension from Ericson to Chambers is not reasonably required in the interest of public convenience and necessity. The complaint will be dismissed.

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INVESTIGATION AND SUSPENSION DOCKET No. 1425.  
REDUCED RATES ON COAL TO KANSAS CITY, MO.

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*Submitted January 13, 1922. Decided February 11, 1922.*

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Proposed reductions in interstate rates on coal from mines in the Springfield, Ill., district served by the Chicago & Alton, and from mines in the southwestern field located in Missouri, Kansas, Oklahoma, and Arkansas to Kansas City, Mo.-Kans., and intermediate points found not justified. Suspended schedules ordered canceled.

*M. G. Roberts* for St. Louis-San Francisco Railway Company; *W. W. Miller* for Missouri, Kansas & Texas Railway Company; *G. H. Muckley* for Kansas City Southern Railway Company; *Henry G. Herbel* for Missouri Pacific Railroad Company; *Silas H. Strawn*, *Frank H. Towner*, and *Charles M. Miller* for Chicago & Alton Railroad Company; *C. N. Richards* for Wabash Railway Company; and *K. B. Hannigan* for Southern Railway Company.

*Stanley B. Houck* for Peabody Coal Company and other interveners; *Thomas L. Philips* for Southwestern Interstate Coal Operators Association; *R. W. Ropiequet* for coal operators associations of southern Illinois; *John S. Burchmore* and *C. P. Hoy* for Fifth and Ninth Districts Coal Bureau; *A. P. Rudowsky* for Oklahoma Coal Operators Association; *C. E. Childe* for Omaha Chamber of Commerce Traffic Bureau; *A. C. Owen* for Swift & Company; *B. E. Reed* for Cudahy Packing Company; *J. H. Tedrow* for Chamber of Commerce of Kansas City, Mo.; *C. D. Dooley* for Peet Brothers Manufacturing Company; *W. E. Willey* for Procter & Gamble Manufacturing Company; *R. J. Higgins* for receivers of the Kansas City Railways Company; *W. A. Brewerton* for Sangamon County Mining Company and Illinois operators at Springfield and Lincoln, Ill.; *A. E. Lee* for Union Fuel Company and Panther Creek Mines; *T. M. Harber* for Kansas City Power & Light Company; and *H. J. Smith* for city of Kansas City, Kans.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

By schedules filed to become effective on various dates from October 25 to November 27, 1921, the Kansas City Southern; Missouri

Pacific; Missouri, Kansas & Texas; and the St. Louis-San Francisco propose to reduce their respective rates on lump and slack coal from certain producing fields in Kansas, Missouri, Arkansas, and Oklahoma to Kansas City, Mo.-Kans., and other points adjacent, or intermediate, to Kansas City, 28.5 cents per ton. The Chicago & Alton proposes a like reduction on fine or slack coal from the mines on its lines in the Springfield, Ill., district to Kansas City and intermediate points in Missouri. The carriers in the order named above will be designated herein as K. C. S., M. P., M., K. & T., Frisco, and Alton. Reference to the southwestern carriers will mean the roads named above, except the Alton, and the expression slack coal will include pea, soft, and fine coal and screenings. Protests were filed by the Alton and Springfield coal operators to the reductions proposed by the southwestern carriers, and by the southwestern carriers and coal operators to the reductions proposed by the Alton, and the schedules were suspended until March 24 and 27, 1922. Rates will be stated in amounts per net ton of 2,000 pounds.

The southwestern coal fields from which the proposed reductions apply are composed of mines or groups of mines in the states of Kansas, Missouri, Arkansas, and Oklahoma, and generally south of Kansas City. The Rich Hill, Mo., group touches both sides of the Missouri-Kansas line at an average distance of about 80 to 85 miles from Kansas City; the southern Kansas group, also known as the Pittsburg, Kans., group, or the Missouri-Kansas group, is south of the Rich Hill group, and includes mines in the southeast corner of Kansas and in southwest Missouri, an average of about 117 to 132 miles from Kansas City; the Arkansas-Oklahoma group includes mines in the vicinity of Fort Smith, Ark., an average distance of about 299 to 343 miles from Kansas City; the Henryetta and McAlester groups in Arkansas are about 299 to 321 miles from Kansas City, and the Spadra, Ark., group about 424 to 427 miles. The issues center upon the rates from the southern Kansas group, which produces the bulk of slack coal in the southwest. The weighted-average haul from this group to Kansas City is shown as 127 miles, and the average short-line distance is about 117 miles.

The Springfield district is located in the vicinity of Springfield, Ill., but the rates under suspension apply only from those mines in this district served by the Alton and from Colliery, Ill., on the Springfield Terminal. The average short-line distance from these mines to Kansas City over the Alton is about 307 miles, not including any constructive mileage for the Mississippi River crossing, and the average from all mines on all lines in the Springfield group is about 358 miles.

The short-line distance from the Alton mines in the Springfield group to Kansas City, 307 miles, is 190 miles greater than the short-line distance over the Kansas City Southern from the southern Kansas group; and the average distance from the entire Springfield group to Kansas City is said to be about the same as from all of the groups of mines in Arkansas and Oklahoma south of the southern Kansas group. The average distances used in this report are taken from numerous exhibits of record.

The present and proposed rates on coal from the southwestern fields to Kansas City are as follows:

	On lump.		On slack.	
	Present.	Proposed.	Present.	Proposed.
Rich Hill group.....	\$1.62	\$1.335	\$1.35	\$1.065
Southern Kansas group.....	1.89	1.605	1.485	1.20
Arkansas-Oklahoma and McAlester groups.....	3.645	3.336	2.565	2.28
Henryetta group.....	3.24	2.955	2.565	2.28
Spadra, Ark., group.....	3.78	3.495	2.565	2.28

The present and proposed rates of the Alton from mines on its lines in the Springfield district to the same destination, are:

	Present.	Proposed.
Fancy lump .....	\$2.77	-----
Commercial lump .....	2.635	-----
Fine coal .....	2.295	\$2.01

The reductions proposed by the southwestern carriers apply on lump and slack coal, and those of the Alton on slack coal only. The present difference in the slack-coal rates from the Alton mines in the Springfield district, and from those in the southern Kansas district, is 81 cents in favor of the latter. Under the proposed reductions, this difference would be maintained.

The southwestern carriers assert that their present rates are not unreasonable and that the revenue received under them is not excessive. They, with the exception of the M. P., ask us to permit their proposed rates to become effective in order to widen the spreads between the competing fields, and to order the cancellation of the proposed Alton rate. They propose to widen the present difference in favor of the southern Kansas group from 81 cents to \$1.095, but ask that their reductions be allowed only on condition that the Alton is prevented by us from reducing its rates from the Springfield group. The M. P. opposes all of the proposed reductions, including its own; and it urges that all of the suspended schedules should be canceled and that a differential between the competing fields should be fixed by us. The Atchison, Topeka & Santa Fe and the Chicago, Rock



Island & Pacific, which serve mines in the southwestern fields, have not joined the K. C. S. and the Frisco in the rates which the latter propose.

The Alton opposes reductions in all of these rates, including its own. It insists that the present rates from the two fields are on a proper basis, and that a widening of the present difference, as proposed by the southwestern carriers, would exclude Springfield coal from the Kansas City market. The Wabash, which forms a longer route than the Alton from mines in the Springfield group and which for competitive reasons meets the present rates of the Alton on lump coal, and 10 cents higher on fine coal, from the Springfield group to Kansas City, opposes the proposed reductions of the Alton and the southwestern lines, and states that it will reduce its rates if the Alton's proposed rates are allowed to become effective.

The lines in Illinois serving other groups are not proposing reductions similar to those proposed by the Alton, and, with the exception of the Wabash, have not seen fit to meet the competition from the southwest at Kansas City.

The Southern Railway opposes all of the proposed reductions, and states that if the suspended schedules are allowed to become effective it will have to equalize, for competitive purposes, a line of depressed rates.

#### RATE HISTORY.

The present controversy between these competing carriers had its beginning in August, 1916, when the Alton published from the mines on its lines in the Springfield district to Kansas City a rate of \$1.25 on fine coal and in October of the same year rates of \$1.60 and \$1.50 on fancy lump and commercial lump, respectively. Prior to this, coal rates from the Springfield district to Kansas City were from \$1.15 to \$1.25 higher than those from the Missouri-Kansas fields. There was no fixed differential, but the southwestern carriers contend that this difference was of long standing and was the result of properly adjusted freight rates. They maintain that \$1.80 was the standard coal rate from Mississippi River crossings, East St. Louis to Dubuque, inclusive, to Missouri River crossings, Kansas City to Omaha, inclusive, from 1891 to 1915. This rate was probably made by using a distance scale across the state of Iowa which produced a rate of \$1.50, and adding thereto a 30-cent arbitrary for crossing the Mississippi. Rates on coal from points east of the Mississippi to Missouri River crossings appear to have been made by using local or proportional rates to the Mississippi and the established rate of \$1.80 beyond. On September 3, 1900, the Alton applied the Mississippi crossings rate from mines on its lines in the Springfield dis-

trict to the Missouri River crossings. This action was followed later by the Wabash and other roads in the Springfield district. The rate thus established was increased 10 cents on September 30, 1915, by our order in Investigation and Suspension Docket No. 555, thus making the Alton rate on all grades of coal from the Springfield district to Kansas City \$1.90.

On August 22, 1916, the Alton reduced its rate on slack coal from Springfield to Kansas City from \$1.90 to \$1.25 and shortly thereafter its rates on fancy lump and commercial lump from \$1.90 to \$1.60 and \$1.50, respectively. As a result of these reductions the difference in rates from the southern Kansas and Springfield groups was reduced from \$1.15 to 50 cents on slack coal. Later the Wabash met the Alton's rates on lump coals and put into effect a rate on fine coal 10 cents per ton higher than the Alton's rate of \$1.25 to Kansas City.

These rates were increased in 1917 15 cents per ton, pursuant to *The Fifteen Per Cent Case*, 45 I. C. C., 303; on June 25, 1918, by specific amounts under general order No. 28; and in 1920 as authorized by us.

As a result of these increases the difference in rates on slack coal in favor of the southern Kansas mines, as compared with the Alton's Springfield mines to Kansas City, has been increased from 50 cents to 81 cents per ton.

When the reductions referred to above were proposed by the Alton in 1916 they were vigorously protested by the southwestern carriers, and we were asked to suspend the rates. An exhaustive hearing was held before our suspension board and the request for suspension was denied.

In their protests against the Alton's reductions in 1916 the southwestern carriers contended that coal from the southwestern fields would be driven out of the Kansas City market. They now state that the predicted result, which did not occur immediately, was only temporarily delayed by the unprecedented demand for coal brought on by the war and by the Fuel Administration's order which zoned all eastern coal out of Kansas City from April 1, 1918, to February 1, 1919; and show that the Alton moved 427,156 tons of coal from the Springfield district to Kansas City in 1921, as compared with the total of 389 tons shipped from the entire Springfield district to the same destination in 1915. But the Illinois operators show that the annual consumption of steam coal in the Kansas City market is about 2,250,000 tons per year; that the total lump and slack coal from the southern Kansas group alone, not including shipments from the other groups in the southwest, to Kansas City in 1920 was 568,198 tons and in 1921 it was 629,560 tons, as compared

with the total of 386,032 tons from mines in the Springfield group on the Alton to Kansas City in 1920 and 427,156 tons in 1921. In 1921 the southern Kansas mines increased their shipments to Kansas City about 60,000 tons over 1920 and the Alton mines increased theirs only about 40,000. In 1921, when the Alton mines' shipments to Kansas City were at the maximum, they furnished less than 25 per cent of the total consumption of steam coal in Kansas City. This showing overcomes the contention of the southwestern carriers and coal operators that a reestablishment of the former relationship in rates is necessary to the life of the coal industry in the southwest.

#### RATES FROM THE SOUTHWESTERN FIELDS.

The southwestern carriers contend that the existing relationship between the rates from the southwestern fields and those from the Springfield district is relatively unreasonable, improper, and unfair to the extent that it differs from the relationship in effect prior to the Alton's reductions in 1916; and that the relationship deprives the southwestern operators of their right to reach a competitive market under circumstances which their location and conditions of production fairly entitle them to, and enables the Springfield operators to overcome their natural disadvantage in distance. They attempt to show that the rates proposed from the southwest are reasonable in and of themselves and that the rates proposed by the Alton are unreasonably low and less than sufficient to pay the cost of transportation.

The present rate on slack coal from the Rich Hill group, based on 80.3 miles, yields 16.9 mills per ton-mile and the proposed rate would yield 13.3 mills; from the southern Kansas group, 117.2 miles, the present rate on slack yields 12.7 mills and the proposed rate would yield 10.3 mills; from the Arkansas-Oklahoma group, 298.6 miles, the present rate yields 8.6 mills and the proposed rate would yield 7.6 mills. The present rate on slack from the Alton mines in the Springfield group, 306.6 miles, yields 7.5 mills, with no deduction or allowance of constructive mileage for the Mississippi river crossing, and the proposed rate would yield 6.5 mills. With an allowance of 3 miles and a deduction of 34 cents per ton for the river crossing the proposed rate of the Alton would yield 5.5 mills. The proposed rates if extended to apply over the longer line of the Wabash from the mines in the Springfield group would yield less than those of the Alton.

By means of graphic charts the southwestern lines show that the earnings per ton-mile under the present rates from the southwestern fields are somewhat higher than those under the rates from the

Springfield group whether the short-line average distances or the average distances over all workable routes be used. They further show that the average earnings per ton-mile under the rates proposed from the southwestern field would be slightly in excess of the earnings under the present rates from the Springfield group. But consideration must be given to the fact that the southwestern fields include mines which are very close to Kansas City, as compared with the mines in the Springfield district nearest to Kansas City, and to the fact that the bulk of the tonnage from the southwest originates in the southern Kansas group, from which the average weighted haul is only about one-third of the average distance from the Alton and Wabash mines in the Springfield group. Furthermore, it is not denied that the haul from the Illinois fields to Kansas City is through a lower rated territory than the haul from the southwestern fields to Kansas City. The weighted-average ton-mile earnings from the southwestern fields may properly be slightly higher than from the Illinois fields to the common destination.

The specific reduction of 28.5 cents proposed from the southwestern fields was apparently intended to fit the rates from the southern Kansas group, and no attempt has been made to justify the blanket reduction from all of the southwestern groups regardless of the wide differences in distances and rates. The blanket reduction is open to further criticism in that the proposed rate of \$2.28 on slack coal from the Arkansas-Oklahoma, McAlester, Henryetta, and Spadra groups for average distances of about 424 to 427 miles is lower than the present rate of \$2.295 on slack coal from the Alton and Wabash mines in the Springfield group. It is conceded by some of the interested parties, and denied by none, that the rates from the groups in the southwest south of the southern Kansas group should not be less than the contemporaneous rates from the Alton mines in the Springfield group. These circumstances alone warrant the cancellation of the proposed rates of the southwestern lines from the lower groups in Arkansas and Oklahoma.

The southwestern lines do not propose to reduce their rates to Omaha, which competes with and draws coal from the same fields as Kansas City. Omaha interests contend with force that the proposed reductions from the southwest would result in undue preference in favor of Kansas City and subject Omaha to undue prejudice. The present rate on slack coal from the southern Kansas group to Omaha is \$2.565, or \$1.08 higher than the present rate of \$1.485 to Kansas City. The proposed rate of \$1.20 to Kansas City would be less than half the rate to Omaha. The present differential, Omaha over Kansas City, is based upon the relationship of 70 cents in effect for a number of years prior to June 25, 1918. If the proposed reduc-

tions are permitted to become effective the differential will be further widened to \$1.365.

The Omaha interests contend that the present differential, Omaha over Kansas City, should not be further widened, and that no reductions should be permitted from the southwestern fields to Kansas City without corresponding reductions to Omaha. There is merit in this contention.

#### THE ALTON'S RATES FROM THE SPRINGFIELD GROUP.

The Alton's position is summarized in the statement that the present rates on coal from its Springfield district and from the southwestern fields to Kansas City are proper rates fairly related, and not unreasonably high; and that the proposed reductions will result in rates which are depressed and which will not yield a proper return. It states that the reductions proposed by it were filed merely for the purpose of maintaining the present relationship on slack coal between the rates from the southwestern fields and the rates from mines on its line in order to conserve its annual revenue of more than a million dollars from this traffic and to protect the millions of dollars invested in the development of mines on its line in the Springfield group. It offers evidence to show that the present rates of the southwestern lines are not unreasonable; that the present relationship between those rates and its rates from the Springfield group should not be widened; and that routes of the southwestern lines traverse a territory of higher rate level and lower traffic density than the territory between Springfield and Kansas City. They contend that the southwestern lines have failed to prove that any improper relationship exists.

In justification for the reductions made by the Alton in 1916, its witness shows that from 1912 to 1915, inclusive, only 22 carloads of coal moved over the Alton to Kansas City, which city is the second largest consumer of coal reached by the Alton's rails. Its eastbound tonnage was developing much faster than the westbound, and the reduction was made to induce the westbound movement of coal. As a result of the reduction the movement of coal over its line to Kansas City increased from practically nothing in 1915 to 293,395 tons in the year ending July 31, 1917. During that year its gross ton-mile traffic westbound practically equaled the eastbound traffic. The business has developed through a period of five years, except during the period August 1, 1917, to July 31, 1918, when eastern coal was excluded from Kansas City under the zoning orders of the Fuel Administration. Additional equipment and motive power has been purchased to handle this traffic, which is particularly

desirable because it forms the only tonnage available to the Alton, which can enable it to equalize its traffic in both directions. It contends that the widening in the present spread in favor of the southwestern fields would exclude the Springfield coal from the Kansas City market, with a direct loss of revenue to it and an economic loss because of wasted transportation effort.

The Alton distinguishes between traffic moving through a gateway such as St. Louis over separately owned bridges and traffic over its direct single line from the Springfield mines, which crosses the Mississippi River over its own bridge at Louisiana, Mo., in an uninterrupted movement. At Kansas City a number of deliveries are made on the Alton's own rails and its switching absorption for deliveries on other lines is limited to \$4 per car. The southwestern lines provide for greater absorptions.

Its present rate of \$2.295 on slack from the Springfield district to Kansas City, yielding 7.52 mills for the average weighted haul of 306 miles over its line, is compared with the rate of \$2.72 from the Springfield mines over the Wabash to Detroit, a distance of about 480 miles, yielding 6.04 mills; and with the rate of \$1.46 for 197 miles from the Springfield district over the Cincinnati, Indianapolis & Western to Indianapolis. The Alton further shows that the yield of 9.08 mills on fancy lump, 8.31 mills on commercial lump, and 7.52 mills on slack coal, and its weighted-average yield of 7.93 mills on all coal from its Springfield mines to Kansas City are higher than the weighted-average yield of 7.76 mills for the average haul of 162 miles on all coal handled over its lines.

The Alton further contends that the ability of its Springfield mines to market coal in Kansas City under the present disadvantage of 81 cents per ton in freight rates is due to the extraordinary service given by these operators to the consumers as compared with the uncertain supply and lack of service given by the southwestern operators. It contends that the evidence offered by the southwestern operators to show that their costs of mining exceed the costs in the Springfield district is not entitled to consideration in this case. The southwestern operators submitted exhibits to show that the mining costs in their field exceeded the costs in the Springfield district 91 cents in 1918, \$1.05 in 1919, \$1.28 in 1920, and as high as \$1.79 in 1921. They state that the purpose of this evidence is to show that the Springfield district needs no artificial assistance in placing its coal in the Kansas City market. The Springfield operators assail the accuracy of these estimates and state that under the abnormal conditions of 1921, when many mines were closed and others were operated only occasionally, it is impossible to make a fair comparison of costs. The southwestern coal is rated from 6 to 10 per cent higher in heat units than the

Springfield coal and the Springfield operators contend that this fact, together with the present difference of 81 cents in freight rates, gives the southwest a decided advantage in the Kansas City market.

The municipalities of Kansas City, Kans., and Kansas City, Mo., and the Chamber of Commerce of Kansas City, Mo., contend that the time is ripe for general reductions in rates on fuel coal, and that therefore the reductions proposed by both the southwestern lines and the Alton to Kansas City should be permitted to become effective. They undertake to show by various exhibited comparisons that the proposed rates are reasonable and compensatory, and that the carriers can well afford to haul this traffic at the proposed rates. In comparing the rates on coal and other commodities between Pittsburg, Kans., and Kansas City they show, for example, that the proposed rate on slack coal would yield \$54 per car, as compared with yields of \$54 on draintile and \$46.20 on cattle under the present rates. Other comparisons show that the proposed rates on coal from the Springfield district to Kansas City measure well with the earnings on other commodities between the Mississippi and Missouri rivers. The proposed rate on slack coal 307 miles would yield \$90.40 per car, as compared with the present rates for an average distance of 325 miles between the rivers which yield \$84 on draintile and \$93 on fresh meat or flour, and as compared with the average earning on all freight of the Alton during the year 1920 of \$45 per car. Other comparisons are submitted to show that the rates on coal from the Springfield district to Kansas City compare favorably with the rates for equal distances from the Illinois fields to various destinations in Iowa, Wisconsin, and Illinois.

They state, further, that the elimination of natural gas and the limitation of the supply of fuel oil have served to greatly increase the demand for coal at Kansas City, and that the southwestern fields do not produce enough steam coal to supply Kansas City, St. Joseph, Topeka, and Omaha.

Certain of the interveners oppose a further widening of the spread in rates in favor of the southwestern mines on the ground that it would not reduce the cost of coal to the consumer, but would merely result in an increased profit to the dealers in coal from the southwestern field, and would exclude the Springfield coal from that market. They desire the continuation of reasonable rates from both fields in order that the movement from both may be free and uninterrupted.

Omaha and St. Joseph show that a reduction in rates from the Springfield mines, as well as the southwestern mines, to Kansas City, without corresponding reductions to the upper Missouri River cities which compete with Kansas City would increase the alleged present unfair and unduly prejudicial relationship in favor of

Kansas City. Reference is made to the pending case of *Commerce Club of St. Joseph, Mo., v. A. & S. R. R. Co.*, No. 12862, assailing the rates from the Springfield district to St. Joseph as compared with the rates to Kansas City. Under the present adjustment from Springfield the rate on slack coal to Omaha is 141 per cent of the rate to Kansas City, and the average short-line distance to Omaha is 146 per cent of the distance to Kansas City. If the proposed reduction to Kansas City is permitted to become effective the Omaha rate will become 162 per cent of the rate to Kansas City.

The Fifth and Ninth Districts Coal Bureau opposes the reductions proposed from the southwestern fields and states that there is no warrant therefor, without at least a corresponding reduction from mines in the Springfield group; that to grant the southwestern reductions would unquestionably result in shifting the tonnage from Alton and Wabash mines and excluding Illinois coal from Kansas City. They oppose the reductions proposed by the Alton unless corresponding reductions are made from the other Illinois groups, and state that we could not order reductions in their rates in this proceeding. Mines in the Belleville group, an average distance of about 24 miles from East St. Louis, they contend, should be a factor in the Kansas City market on account of their close proximity thereto. The distance from the Belleville group to Kansas City is less than or substantially the same as from the Springfield group, dependent upon the route. The Alton's present rate of \$2.295 on slack coal from the Springfield district to Kansas City is approximately \$1 per ton less than the rates of \$3.31 and \$3.24 from the Belleville group. Practically no coal moves from the Belleville group to Kansas City under the present difference in rates, and they ask that we prevent any further spread by ordering the cancellation of the proposed schedules.

The coal operators associations of southern Illinois object to the proposed reductions from both fields on the ground that no corresponding reductions are proposed from southern Illinois mines. They contend that the southwestern lines have not justified their proposals; that this proceeding is predicated solely upon competitive commercial rivalry and should have been presented in the form of complaints rather than in the present form, which can only lead to reduction of carriers' revenues.

We do not feel that particular reductions of the kind here proposed should be encouraged during a period when we are considering the question of general reductions in rates, especially in view of the admissions and assertions that the reductions proposed here, if allowed to become effective, would mark the beginning of a rate war between certain individual carriers in the southwest and the Alton.



We find that the proposed reductions from the southwestern fields to Kansas City without corresponding reductions in joint rates from mines served by respondents to Omaha over their own lines, and in connection with other carriers, would result in undue preference of Kansas City and in undue prejudice to Omaha, and are not justified.

We further find that the proposed reductions from the Alton mines in the Springfield group to Kansas City without corresponding reductions in joint rates from the same mines to St. Joseph and Omaha in connection with other carriers would result in undue preference to Kansas City and in undue prejudice to St. Joseph and Omaha, and are not justified.

An order will be entered requiring the cancellation of the schedules under suspension.

66 I. C. C.

No. 12231.

REEVES COAL & DOCK COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted January 12, 1922. Decided February 11, 1922.*

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Charges applicable for the transportation of a carload of lump coal from Hillsboro, Ill., to Elroy, Wis., reconsigned to Wausau, Wis., found not unreasonable or otherwise unlawful. Complaint dismissed.

*Stanley B. Houck* for complainant.

*L. A. Mizener* and *Fred W. Heidl* for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainant to the report proposed by the examiner, and the issues were orally argued before us.

Complainant, a corporation engaged in the coal business at Minneapolis, Minn., alleges that the charges collected for the transportation of one carload of coal, shipped February 14, 1920, from Hillsboro, Ill., consigned to it at Elroy, Wis., and subsequently reconsigned to Wausau, Wis., were unlawful, unauthorized, unjust, and unreasonable. We are asked to award reparation.

The facts are not in dispute. The shipment weighed 128,000 pounds, and moved as routed via Cleveland, Cincinnati, Chicago & St. Louis to Benld, Ill., Chicago & North Western, hereinafter referred to as the North Western, beyond to Elroy, via Afton, Wis. On February 19, 1920, complainant mailed from Minneapolis to the local agent of the North Western at Elroy an order reading: "Forward contents of following cars to Wausau Service Co.—Wausau Wisc—W & L E 72141—In transit to us to Elroy Wisc." This order was received by the agent at Elroy on February 20. Upon arrival of the car at Elroy on February 28, it was reconsigned to Wausau, in compliance with complainant's order, apparently moving over the Chicago, St. Paul, Minneapolis & Omaha and the North Western. Charges were collected in the sum of \$286.80, at combination rates on Elroy aggregating \$4.45 per net ton, plus \$2 for re-

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consignment. It appears, however, that the combination rate applicable over this route was \$4.55, composed of a commodity rate of \$2.35 to Elroy and a commodity distance rate beyond of \$2.20 for 143 miles, and hence that the shipment was undercharged. Contemporaneously, a joint rate of \$2.40 per net ton was in effect from Hillsboro to Wausau, which did not apply via Elroy, but was restricted to the direct route of the North Western through Afton, Janesville, and Eland, Wis. Had the shipment moved over this route the charges for the transportation would have been \$153.60, plus \$2 for the diversion. The measure of the rates over the route of movement is not assailed, complainant's contention being that the car should have been diverted before it passed Afton, and forwarded over the route taking the \$2.40 rate.

It is contended that the agent at Elroy was negligent, because he failed to take the necessary steps to divert the car over the route by which the joint through rate applied. Defendants urge that the information given in the order was not sufficient to justify any action on the part of the agent other than that which was taken.

Defendant's reconsignment tariff contained the usual provision that upon request for diversion or reconsignment of carload freight the carrier would make diligent effort to locate the shipment and effect the diversion or reconsignment, but would not be responsible for failure so to do, unless such failure was due to negligence of its employees.

Negligence is the violation of an obligation to use care and due diligence. In a case of this character a duty is imposed upon the carrier to use ordinary care and diligence in executing the order of the shipper. The only information shown on complainant's order was the car number and initial and the fact that the car was in transit to complainant at Elroy. It failed to give the point of origin, the route of movement, the commodity, or any other information which would have enabled the North Western to make the necessary diversion. It contained no request to protect the through rate. The plain words of the order indicate that the shipper intended reconsignment to be accomplished at Elroy. Moreover, "In transit to us to Elroy Wisc" was notice to the agent that if the car had not arrived at Elroy when the order was received, it would reach there shortly. These facts were sufficient to justify the agent in holding the order until the arrival of the car and executing the instructions of the shipper at that time. Under the circumstances, negligence can not be imputed to defendant.

Complainant on brief contends that defendant had no tariff provision specifying with whom reconsignment or diversion orders must be filed, or specifying what information the order must contain. As

to the first of these contentions it may be said that the tariff gave the name and address of the officer in charge of reconsigning, and stated that reconsigning orders should be submitted in writing to him direct or through an agent or general agent. As to the second contention, our experience has not demonstrated that any such rule is necessary. Reason and common prudence would dictate that a shipper asking for diversion of a car in transit should give such information concerning it as will enable the carriers to determine not only the character of the shipment but also between what points it is moving, in order that they may form some idea of where it can be intercepted.

We find that defendant complied with complainant's instructions, and that the charges applicable were not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 12333.

STANDARD OIL COMPANY (CALIFORNIA)

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted August 11, 1921. Decided February 11, 1922.*

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Rates applicable on gasoline, in tank-car loads, from points in Texas and Oklahoma to Brawley and Calipatria, Calif., and from Greybull, Wyo., to Klamath Falls, Oreg.; and on wrought-iron pipe, in carloads, from McKeesport, Pa., to Taft, Calif., found not unreasonable or otherwise unlawful. Shipments found overcharged. Refund of overcharges directed and complaint dismissed.

*W. O. Banks* for complainant.

*F. H. Wood, James R. Bell, Elmer Westlake, and C. W. Dur-*  
*brow* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, and CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

During federal control complainant shipped eight tank-car loads of gasoline from points in Texas and Oklahoma to Brawley and Calipatria, Calif., and one tank-car load from Greybull, Wyo., to Klamath Falls, Oreg. Subsequently it shipped nine carloads of wrought-iron pipe from McKeesport, Pa., to Taft, Calif., six between August 9 and 25, 1920, and three thereafter. It alleges that the rates charged for the transportation of these shipments were illegal, unjust, unreasonable, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. The prayer is for reparation. Rates will be stated in amounts per 100 pounds.

The principal question presented is whether rates to points farther distant than the destinations and junction point named were applicable on these shipments under an intermediate clause in the tariff. Defendants admit that, when these shipments moved, clerical errors

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in the tariff which were corrected on February 28, 1920, made lower joint commodity rates applicable to farther distant points in violation of the fourth section, but contend that the rates charged to the intermediate points were applicable.

Brawley and Calipatria are on the Imperial Valley branch of the Southern Pacific between Niland and Melon, Calif. Klamath Falls is on that carrier's Klamath Falls branch between Weed, Calif., and Modoc Point, Oreg. Taft is on the Sunset, the latter's junction with the Southern Pacific being Gosford, Calif., a point between Bakersfield and Strand, Calif. Greybull is on the Chicago, Burlington & Quincy, west of Cheyenne, Wyo.

No joint rates were published to any of the destinations specifically, and combination rates were charged. On the gasoline these were \$1.015 to Brawley, 98.5 cents to Calipatria, and \$1.565 to Klamath Falls. A joint commodity rate of 94.5 cents was contemporaneously applicable from the Texas and Oklahoma points of origin to Melon, and from Cheyenne to Modoc Point.

The rates charged on the pipe were \$1.39 prior to August 26, 1920, and \$1.84 thereafter. Before and after that date rates of \$1.25 and \$1.665, respectively, applied from McKeesport to Strand; and fifth-class rates, applicable to wrought-iron pipe, of 11.5 and 14.5 cents, respectively, from Gosford to Taft. Application to Gosford, an intermediate point, of the rates from McKeesport to Strand results in combination rates of \$1.365 and \$1.81 prior to and after August 26, 1920, respectively.

The applicable transcontinental tariff provided for the application to intermediate points of rates from or to the next more distant station when rates are not specifically published, subject to the general proviso, "Except as may be otherwise specifically provided in the tariff." A commodity-rate basis was provided to Brawley, Calipatria, Klamath Falls, and Gosford, but no rates were shown thereunder for gasoline or wrought-iron pipe. It is defendants' contention that, since these "points" were specifically provided for in the tariff in the manner indicated, the intermediate clause was not applicable. But that clause was applicable when "rates" were not specifically published to or from stations less distant than those to or from which rates were provided, and the publication of a rate basis without corresponding rates did not operate to make inapplicable the intermediate clause.

Our tariff rules require the publication of rates in clear and specific manner, and include a rule extending rates to intermediate points which is not subject to misinterpretation. The tariff here considered should be amended by adoption of a rule substantially in

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accord with that appearing in supplement No. 3 to Tariff Circular No. 18-A.

We find that the rates applicable were not unreasonable or otherwise unlawful; and that these shipments were overcharged to the extent that the rates charged on the gasoline exceeded 94.5 cents per 100 pounds, and on the wrought-iron pipe \$1.365 and \$1.81 per 100 pounds prior to and after August 26, 1920, respectively. Defendants should promptly refund the amount of the overcharges to complainant, with interest. The complaint will be dismissed.

66 I. C. C.

No. 10592.  
ARKANSAS JOBBERS & MANUFACTURERS  
ASSOCIATION  
v.  
DIRECTOR GENERAL, CHICAGO, ROCK ISLAND &  
PACIFIC RAILWAY COMPANY, ET AL.

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*Submitted July 15, 1921. Decided February 18, 1922.*

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Local rates on grain and grain products in carloads, from St. Louis, Mo., and from Cairo and Thebes, Ill., to certain points in Arkansas found unduly prejudicial. Nonprejudicial rates prescribed.

*A. D. Beals and H. M. Gregory* for complainant.

*Henry G. Herbel and James M. Chaney* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.  
*MEYER, Commissioner:*

Exceptions to the report proposed by the examiner were filed by complainant.

The Arkansas Jobbers & Manufacturers Association, complainant herein, is an association of shippers and commercial organizations located at various points in Arkansas. By complaint, filed April 25, 1919, as amended, it alleges that the local rates on grain and grain products from St. Louis, Mo., Cairo and Thebes, Ill., and Kansas City, Mo., to the points in Arkansas named in the margin<sup>1</sup> are unreasonable and unduly prejudicial and afford undue preference and advantage to shippers at Little Rock, Pine Bluff, and Fort Smith, Ark., and Memphis, Tenn. The complaint also attacks as unreasonable and unduly prejudicial the increases in the rates on coarse grains, i. e., corn, oats, rye, and barley, and on mill products taking the same rates, to the level of the rates on wheat, as provided in general order No. 28 of the Director General of Railroads. Rates hereinafter are stated in cents per 100 pounds and unless otherwise noted do not include the general increases authorized by us on July 29, 1920.

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<sup>1</sup> Arkansas City, Batesville, Blytheville, Calico Rock, Camden, Cotter, De Queen, Dermott, El Dorado, Eudora, Fayetteville, Fordyce, Forrest City, Hamburg, Hope, Hot Springs, Jelks, Kensett, Parkin, Mena, McGehee, Monticello, Nashville, Newport, Osceola, Prescott, Rogers, Siloam Springs, Warren, and Wynne.



In *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 59 I. C. C., 662, we had before us the adjustment of proportional rates on grain and grain products from St. Louis, Cairo, Thebes, and Kansas City to stations in Arkansas. The complaint in that case was predicated on the inequalities in the rate adjustment under which relatively lower rates were maintained from those points of origin to Little Rock, Pine Bluff, Fort Smith, and Memphis than to the points where complainant's members were located. When the case was heard, the spread between the proportional rates from St. Louis, Cairo, and Thebes to points in northern and southern Arkansas was confined largely to the territory south of the alleged preferred points, to the disadvantage of the jobbers in southern Arkansas. This inequality in grading was found to afford undue preference and advantage to shippers at the three Arkansas points named to the corresponding disadvantage of shippers elsewhere in the state. To correct this maladjustment, rates were prescribed to the various points with due regard to relative distances.

The complaint against the local rates is founded on substantially the same facts that gave rise to the complaint against the proportional rates, and the evidence offered by the parties deals more largely with the question of undue prejudice than with inherent unreasonableness of the rates and was practically the same in both cases. At the time of the hearing the local rate on wheat from St. Louis to Moark, near the northern boundary of Arkansas, was 19 cents, and to Little Rock, in the central part of the state, 22.5 cents, a spread of 3.5 cents for a difference in distance of 159 miles. From Little Rock south to Texarkana, on the Arkansas-Texas state line, a distance of 144 miles, the increase in the rate was 10.5 cents. The rate to Little Rock applied also to Pine Bluff, making the spread between the rates to Moark and Pine Bluff 3.5 cents for a difference in distance of 201 miles, as contrasted with a spread of 11.5 cents between the rates to Pine Bluff and El Dorado. El Dorado is 90 miles south of Pine Bluff. To most points in Arkansas the rates from Cairo and Thebes were either 2 cents or 2.5 cents lower than those from St. Louis. In some cases the difference was 4 cents.

Defendants conceded that the grain adjustment was improper and when these cases were heard were engaged in revising the rates from the Missouri River and Mississippi River markets to Mississippi River points, Cairo and south to New Orleans, including intermediate points in Arkansas. The local rates on wheat from St. Louis in effect when this complaint was filed and those thereafter established to the points named in the complaint are stated in the following table. The proportional rates from St. Louis to the same points, prescribed in *Arkansas Jobbers & Mfrs. Asso. v. Director General*, *supra*, are also shown.

From St. Louis to—	Distance.	Effective at time of hearing.	Effective on August 25, 1920.	Proportional rates prescribed.
	Miles.	Cents.	Cents.	Cents.
Moark.....	187	19	19	17
Newport.....	261	22.5	23	18
Batesville.....	286	22.5	23	18
Calico Rock.....	341	22.5	23	20
Cotter.....	381	22.5	23	22
Blytheville.....	235	19	19	15.5
Osceola.....	254	19	19	17
Jelks.....	308	19	23	18
Wynne.....	280	19	19	18
Parkin.....	294	19	19	18
Forrest City.....	205	19	24	18
Kansett.....	206	22.5	25	18
Little Rock.....	346	22.5	25	20
Pine Bluff.....	388	22.5	25	22
Hot Springs.....	399	32	32	22
Prescott.....	442	30	33	24
Hope.....	458	30	33	25
Nashville.....	494	30	33	29
Fordyce.....	441	30	30	24
Camden.....	400	32	32	25
Texarkana.....	490	33	33.5	23
Arkansas City.....	420	32	31	23
McGehee.....	408	32	30	23
Dermott.....	416	32	30	23
Eudora.....	447	35	32	24
Monticello.....	438	34	34	25
Warren.....	454	34	34	25
Hamburg.....	451	34	34	25
El Dorado.....	479	34	34	26
Rogers.....	333	20	20	20
Fayetteville.....	353	20	20	20
Fort Smith.....	416	27.5	27.5	23
Siloam Springs.....	368	25	25	25
Mena.....	499	33	33	33
De Queen.....	532			

The rates as revised and in force just prior to August 26, 1920, did not entirely remove the cause for the complaint. For example, it will be observed that the spread between the revised rates to Moark and Pine Bluff was 6 cents, whereas for a less difference in distance between Pine Bluff and El Dorado the spread was 9 cents. The spread between Moark, on the north, and Texarkana, on the south, was 14.5 cents, of which 6 cents took place north of Little Rock and 8.5 cents south thereof.

The grading of the revised local rates is not in harmony with the grading of the proportional rates prescribed in the former proceeding. At Newport the difference between the local rates and the proportional rates prescribed, excluding the general increases of August 26, 1920, was 6 cents, at Little Rock 5 cents, at Pine Bluff 3 cents, at Cotter 1 cent, at Hot Springs 10 cents, and at Hope 8 cents. No reason appears why a uniform difference should not be observed. In the revision of the rates from St. Louis to Memphis and to points in Arkansas the Western Freight Traffic Committee of the Railroad Administration proposed a uniform difference of 6.5 cents between the local and proportional rates.

In view of the similarity between this case and the case involving the proportional rates it is not deemed necessary to enter into any

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further discussion of the former and revised adjustments of the local rates. While the movement under local rates is less in volume than under proportional rates and the disadvantage to the complaining localities is therefore less pronounced, nevertheless complainant is entitled to an adjustment free from undue prejudice on such shipments as may move on the rates attacked. To bring about this result, these rates must be readjusted to place them more nearly upon a distance basis.

There are under the present adjustment some fourth section departures in rates to points in southern Arkansas intermediate to points in northern Louisiana. Applications protecting these situations were not assigned for hearing in connection with this case and the record does not warrant any action in connection therewith.

In *Rates on Grain, Grain Products, and Hay*, 64 I. C. C., 85, we found that the rates on wheat in the territory in which the points under consideration are located will be for the future unjust and unreasonable to the extent that they may individually include more than one-half of the increase authorized under Ex Parte 74, and that the present rates on coarse grains will be for the future unjust and unreasonable to the extent that they may exceed rates 10 per cent less than those prescribed as just and reasonable on wheat from and to the same points.

We are of opinion and find, following *Arkansas Jobbers & Mfrs. Asso. v. Director General, supra*, that the local rates maintained by defendants immediately prior to August 26, 1920, on wheat and articles taking same rates, including flour, in carloads from St. Louis, Cairo, and Thebes to the following stations in Arkansas were unduly prejudicial to those localities and that the rates stated below, increased to the extent authorized on July 29, 1920, as modified by our findings in *Rates on Grain, Grain Products, and Hay, supra*, will be reasonable and nonprejudicial for application in the future.

To—	From St. Louis.	From Cairo and Thebes.	To—	From St. Louis.	From Cairo and Thebes.
	<i>Cents.</i>	<i>Cents.</i>		<i>Cents.</i>	<i>Cents.</i>
Blytheville.....	20.5	18	McGehee.....	28	25.5
Oceola.....	22	19.5	Dermott.....	28	25.5
Newport.....	22	19.5	Arkansas City.....	28	25.5
Wynne.....	23	20.5	Monticello.....	29	26.5
Batesville.....	23	20.5	Fordyce.....	29	26.5
Jelks.....	23	20.5	Prescott.....	29	26.5
Parkin.....	23	20.5	Endora.....	29	26.5
Forrest City.....	23	20.5	Hamburg.....	30	27.5
Kensett.....	23	20.5	Warren.....	30	27.5
Rogers.....	25	22.5	Hope.....	30	27.5
Calico Rock.....	25	22.5	Camden.....	30	27.5
Fayetteville.....	26	23.5	El Dorado.....	31	28.5
Siloam Springs.....	26	23.5	Nashville.....	31	28.5
Cotter.....	27	24.5	Mena.....	31	28.5
Hot Springs.....	27	24.5	De Queen.....	33.5	31

We further find that the local rates on the same commodities in carloads, from St. Louis, Cairo, and Thebes to Little Rock, Pine Bluff, and Fort Smith were unduly preferential and that reasonable and nonpreferential minimum rates for the future will be the following, increased to the extent above referred to.

	From St. Louis	From Cairo and Thebes.
To Little Rock.....	25 cents.	22.5 cents.
To Pine Bluff.....	27 cents.	24.5 cents
To Fort Smith.....	28 cents.	25.5 cents.

We further find that the local rates on coarse grains from and to the same points were, are, and for the future will be unduly prejudicial to said localities and that a reasonable and nonpreferential basis for the future will be rates made 10 per cent less than those prescribed on wheat from and to the same points.

The rates herein found reasonable and nonprejudicial to certain points in Arkansas intermediate between St. Louis, Cairo, and Thebes, on the one hand, and Memphis, Tenn., on the other hand, are higher than the rates from St. Louis, Cairo, and Thebes to Memphis, and fourth section relief between these points has been denied. The defendants will be permitted to maintain rates to said intermediate points which will not be greater than the rates contemporaneously maintained on the same commodities from St. Louis, Cairo, and Thebes to Memphis.

The record does not afford a satisfactory basis for a readjustment of the rates from Kansas City to the points named in the complaint.

An appropriate order will be entered.

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No. 11460.

MINNESOTA BY-PRODUCT COKE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL.

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*Submitted November 19, 1921. Decided February 14, 1922.*

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1. Carload rates on coke from St. Paul, Minn., to points in South Dakota, Iowa, Illinois, Wisconsin, and Michigan found to be unreasonable and unduly prejudicial. Maximum bases of rates prescribed. Reparation denied.
2. Minnesota intrastate rates on anthracite coal not shown to have been an appropriate measure of the rates on coke from St. Paul to Minnesota points during the period of federal control.

*G. W. Morgan, Davis, Severance & Morgan, and Herman Mueller* for complainant.

*Oliver E. Sweet, Raymond L. Dillman, John E. Benton, D. L. Kelley, and E. M. Hendricks* for Board of Railroad Commissioners of South Dakota; *P. R. Wigton and J. P. Haynes* for Traffic Bureau of the Sioux City Chamber of Commerce; *Fred W. Putnam and A. L. Flinn* for Railroad and Warehouse Commission of Minnesota; and *W. A. Prinsen and Frank Lyon* for Northwestern Coal Dock Operators' Association, interveners.

*J. N. Davis and F. G. Dorety* for defendants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

DANIELS, *Commissioner*:

Exceptions were filed to the report proposed by the examiner and oral argument has been had.

In the complaint in this proceeding filed May 10, 1920, it is alleged that the carload rates<sup>1</sup> on coke from the complainant's plant near St. Paul, Minn., to points in Michigan, Wisconsin, Illinois, Iowa, Missouri, North Dakota, South Dakota, Kansas, and Nebraska were and are unreasonable, and unduly prejudicial to complainant to the advantage of competitors at other points, particularly Chicago, Ill., Milwaukee, Wis., and St. Louis, Mo. The rates to points in Minnesota during the period of federal control are alleged to have been

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<sup>1</sup> All rates referred to, unless otherwise specified, are those in effect at the time of the hearing, which was prior to the general increases of 1920, and are stated in amounts per net ton.

unreasonable, and reparation is prayed on intrastate shipments during that period, and on interstate shipments before, during, and after that period.

Interveners in behalf of complainant are the Railroad and Warehouse Commission of the State of Minnesota, the Board of Railroad Commissioners of the State of South Dakota, and the Traffic Bureau of the Sioux City Chamber of Commerce. Another intervention is that of the Northwestern Coal Dock Operators' Association, alleging that unless any reductions made from St. Paul are made also from Duluth, Minn., and Superior, Ashland, and Washburn, Wis., shippers of coal and coke from those lake ports will be unduly prejudiced, inasmuch as the rates on coal and coke from St. Paul and from the ports named are related. Comparatively little coke is shipped from Duluth, but coal, which competes with coke, is shipped from Duluth in great quantities. The latter intervener advocates a distance scale from St. Paul, Duluth, Chicago, and Milwaukee as a solution of the complaint.

Complainant's coke is a by-product coke, and is used both for domestic fuel and for metallurgical purposes. A large tonnage is consumed by bakeries, gas plants, and similar industries. Effort is being made to increase its domestic use. The operation of complainant's plant was begun in 1918. The annual capacity of the plant is 300,000 tons. The actual production was 272,000 tons in 1918, 227,000 tons in 1919, and 118,000 tons in the first six months of 1920. In 1918, 18 per cent, in 1919, 46 per cent, and for the first six months of 1920, 44 per cent of the plant's output was consumed in St. Paul and Minneapolis. The remaining tonnage was shipped principally to points in northern, central, and western Wisconsin, southern Minnesota, eastern South Dakota, Iowa, and North Dakota. At times shipments are made to Kansas and Nebraska. Complainant's competitors are located principally at Milwaukee and Chicago, but in the Missouri River territory and parts of South Dakota substantial competition is encountered from St. Louis. So far as coke is concerned, the competition of Duluth and the Connellsville, Pa., district is negligible, but there is substantial competition between coke from St. Paul and anthracite coal shipped from Duluth. Complainant's plant about equals the St. Louis plants in capacity, while it is many times exceeded in capacity by the combined Milwaukee and Chicago plants.

To points in Minnesota the rates on coke from St. Paul are commodity distance rates; to Wisconsin points they are largely class-D rates; and to points in the other states named they are principally commodity rates. Generally speaking, the rates from St. Paul are much higher, distance considered, than the rates from Milwaukee, Chicago, and St. Louis. For example, to 11 typical points in South Dakota the average distance from Chicago is 642 miles and the

average rate \$3.77, yielding 5.87 mills per ton-mile, compared with an average distance from St. Paul of 298 miles and an average rate of \$3.59, yielding 12 mills. The average distance from Chicago is therefore 215 per cent of that from St. Paul, while the average rate is only 105 per cent of that from St. Paul. Again, to 14 interior Iowa points the average distance from Chicago is 339 miles and the average rate \$2.67, yielding 7.87 mills, compared with an average distance from St. Paul of 243 miles and an average rate of \$2.80, yielding 11.5 mills. The average rate from St. Paul is therefore 13 cents more than from Chicago, although the average distance is 96 miles less than from Chicago. To Sioux City, Iowa, the rate of \$3.20 is only 10 cents less than the rate of \$3.30 from Chicago and St. Louis, although the distance of 267 miles from St. Paul is slightly more than half the distance of 510 miles from Chicago and 514 miles from St. Louis. By contrast, the first-class rate from St. Paul to Sioux City is about 75 per cent of that from Chicago to Sioux City, and commodity rates from St. Paul to Sioux City are generally about that percentage of the commodity rates from Chicago to Sioux City. To Chicago, the rate on coke is \$2.80, compared with \$2.60 from Chicago to St. Paul in the reverse direction.

Upon application of complainant, the revision of the coke rates from St. Paul was undertaken by the defendants in 1917, and in February, 1918, a new scale of rates in Minnesota acceptable to complainant for the time being, was approved by the commission of that state, to the extent of permitting it to become effective for immediate needs, although the new rates were viewed by that commission as unreasonable in that they exceeded the contemporaneous rates on anthracite coal. These rates as increased by general order No. 28 of the Director General of Railroads, remained in effect during the period of federal control. At the same time, commodity rates were established to northern and northwestern Iowa. Upon further application of the complainant in 1918, the St. Paul district freight traffic committee of the United States Railroad Administration, together with officials of the individual carriers, further considered the rates on coke from St. Paul to the general territory here in question, and attempted to work out a distance basis, but abandoned the effort because of the effect a distance scale of rates from St. Paul would have upon the rates from the competing points of Duluth, Chicago, Milwaukee, and St. Louis. The St. Paul committee thereupon proposed specific rates to the various points of destination, which, with one or two exceptions, are those proposed by defendants at the hearing.

The proposed rates would correct the maladjustment, under which rates are higher from St. Paul than from competing coke-producing points farther away from the point of destination. However, they

were not made on a mileage proportion with Milwaukee and Chicago, nor were they made on a distance basis, but each was made with reference to the rates from competing sources of supply, consideration being given to density of traffic and general operating conditions, and to the effect of its establishment upon the rates on coke and anthracite coal from Duluth. The rates from Chicago and Milwaukee themselves are not made on a distance basis, and in ton-mile yields are in some instances higher, and in some lower, than for similar distances from St. Paul.

Generally speaking, to South Dakota the proposed rates are 50 cents under Duluth; to Iowa, Nebraska, Missouri, and southern Wisconsin they are made with relation to the rates from Chicago, Milwaukee, and St. Louis; and to northern Wisconsin they are made with relation to the rates from Duluth. Under defendants' proposal, embracing over 100 typical destinations, the reductions range from 10 to 80 cents in Wisconsin, from 40 to 50 cents in South Dakota, from 20 to 60 cents in Iowa, from 50 cents to \$1.30 in Missouri, and from 50 cents to \$1.40 in Michigan. Complainant has selected 24 points as the most important destinations to which rates should be fixed, and upon which rates to other points in the same general territory should be based. The following table shows the distances from St. Paul to these 24 points, the rates in effect at the time of the hearing, the rates proposed by defendants, and those proposed by complainant:

From St. Paul to—	Distance.	Rate prior to Aug. 26, 1920.	Carriers' proposal.	Complainant's proposal.
	<i>Miles.</i>			
South Dakota:				
Watertown.....	224	\$2.70	\$2.70	\$2.40
Sioux Falls.....	237	3.20	2.80	2.60
Huron.....	264	3.10	3.10	2.80
Aberdeen.....	296	3.50	3.10	2.80
Wisconsin:				
Eau Claire.....	85	2.10	1.60	1.50
Chippewa Falls.....	96	2.10	1.60	1.50
La Crosse.....	131	2.50	2.00	1.50
Rhineland.....	212	2.80	2.30	-----
Stevens Point.....	229	3.00	2.20	2.30
Illinois:				
Chicago.....	400	2.80	2.80	2.60
Moline.....	335	3.50	2.80	-----
Iowa:				
Mason City.....	138	2.60	2.20	1.80
Charles City.....	143	2.60	2.20	1.80
Waterloo.....	205	2.60	2.30	-----
Fort Dodge.....	210	2.80	2.50	2.20
Marshalltown.....	225	2.60	2.60	2.30
Cedar Rapids.....	255	2.60	2.60	2.30
Des Moines.....	258	2.80	2.60	2.30
Sioux City.....	267	3.20	2.80	2.60
Clinton.....	310	3.50	2.80	2.60
Council Bluffs.....	346	3.30	3.30	3.00
Nebraska:				
Omaha.....	346	3.30	3.30	3.00
Missouri:				
Kansas City.....	483	3.80	3.30	3.30
Kansas:				
Kansas City.....	483	3.80	3.30	3.30



In the table below are shown the rates proposed by the carriers to Wisconsin and Michigan points and the rates in effect to those points prior to August 26, 1920:

From St. Paul to—	Rate prior to Aug. 26, 1920.	Rate proposed by carriers.	From St. Paul to—	Rate prior to Aug. 26, 1920.	Rate proposed by carriers.
<b>Wisconsin:</b>			<b>Wisconsin—Continued.</b>		
New Richmond.....	\$1.50	\$1.30	Wausau.....	\$3.50	\$2.30
Ellsworth.....	1.80	1.40	Shawano.....	3.50	2.50
Emerald.....	1.70	1.40	Turtle Lake.....	1.80	1.50
Menomonie.....	2.10	1.60	Rice Lake.....	2.00	1.80
Chippewa Falls.....	2.10	1.60	Ladysmith.....	2.10	1.50
Fau Claire.....	2.10	1.60	Prentice.....	2.80	2.00
Fairchild.....	2.10	1.80	Park Falls.....	2.80	2.00
Merrillan.....	2.10	1.90	Rhineland.....	2.80	2.30
Black River Falls.....	2.50	2.00	Spooner.....	1.80	1.60
La Crosse.....	2.50	2.00	Gordon.....	1.80	1.80
Camp Douglas.....	2.50	2.10	Drummond.....	1.80	1.80
Elroy.....	2.50	2.10	Ashland.....	1.80	1.80
Baraboo.....	2.50	2.50	Hurley.....	3.50	2.80
Madison.....	2.80	2.80	<b>Michigan:</b>		
Janesville.....	2.80	2.80	Hermansville.....	3.40	2.90
Lone Rock.....	3.50	2.80	Escanaba.....	4.30	2.90
Stanley.....	2.10	1.80	Iron Mountain.....	4.30	2.90
Owen.....	2.10	1.80	Iron River.....	3.50	2.90
Marshfield.....	2.10	2.00	Michigamme.....	4.30	2.90
Grand Rapids.....	3.00	2.20	Marquette.....	4.30	2.90
Stevens Point.....	3.00	2.20	Sault Ste. Marie.....	2.90	2.90
Portage.....	3.50	2.50	Watersmeet.....	3.50	2.90
Ripon.....	3.50	2.80	Bessemer.....	3.50	2.80
Oshkosh.....	3.50	2.80			

Upon argument, it was stated for complainant that it was satisfied with the bases of rates proposed by the carriers at the hearing to Michigan points and to Wisconsin points, except that it asks that whatever rate is established from St. Paul to Chicago be also observed as a maximum to Milwaukee and other points in Wisconsin now taking the same rate as Chicago, including such points as Madison, Janesville, Lone Rock, Portage, Ripon, Oshkosh, and Shawano. The rates from St. Paul to North Dakota have been adjusted by the carriers following our decision in *Holmes & Hallowell Co. v. G. N. Ry. Co.*, 60 I. C. C., 687, hereinafter referred to. No complaint is now made as to the rates to North Dakota, and the claim for reparation on past shipments to points in that state has been waived. Complainant still seeks reparation on other interstate shipments and on shipments in Minnesota during the period of federal control. Since prior to the hearing, however, complainant's coke has been sold f. o. b. St. Paul, consignee paying the freight, and no reparation is claimed on such shipments. Aside from the rates above referred to, to Michigan, Wisconsin, and Illinois points, the issues, so far as rates for the future are concerned, have been narrowed to embrace only the rates to points in South Dakota and Iowa and we are asked to require by order a readjustment of rates to representative points in those two states. The rates to Nebraska, Kansas, and Missouri are not regarded by complainant as important, as a readjustment of

rates to those points will follow a change in the rates to points in South Dakota and Iowa.

In the *Holmes & Hollowell Case*, *supra*, decided since the hearing in this case, we prescribed as reasonable and nonprejudicial a distance scale of rates for the interstate transportation of coal from Duluth to points in Minnesota and North and South Dakota. Subsequent to that decision the carriers established a scale of coke rates, hereinafter referred to as the carriers' coke scale, from Duluth to the same destination territory, the rates on coke to South Dakota stations east of the Missouri River being generally made on basis of a differential of 27 cents over the rates on anthracite coal prescribed in the *Holmes & Hollowell Case*, as increased under the general increases of 1920, and reflecting the greater increases on coke than on anthracite coal authorized by general order No. 28. Some slight departures from this general basis were made in order to avoid fourth section violations. The rates from St. Paul to South Dakota points were not changed, however, except where it was necessary that they be reduced in order to be not higher than the revised rates on coke from Duluth.

As stated, the basis of the rates on coke to South Dakota points proposed by the carriers at the hearing was a differential of 50 cents under the rates then applying from Duluth. The rates established from Duluth under the carriers' coke scale, including the 35 per cent increase of 1920, while higher than the rates in effect at the time of the hearing of the instant case, are less than 135 per cent of those rates. To the four South Dakota points selected by complainant as representative, the present coke rates from Duluth are approximately 120 per cent of the rates in effect at the time of the hearing. The following table shows the present rates to these four points on coke from St. Paul and Duluth, including the increases of 1920; also the rates proposed by complainant and the carriers at the hearing as similarly increased; also what the rates from St. Paul would be (a) if based on a differential of 60 cents under Duluth, or 120 per cent of the differential proposed by defendants at the hearing, and (b) if based on the carriers' coke scale, now applied from Duluth, for the distances shown from St. Paul:

	Distance from St. Paul.	Present rate from St. Paul.	Rate pro- posed by carriers.	Rate pro- posed by com- plainant.	Present rate from Duluth.	Rate 60 cents under Duluth.	Rate based on carriers' coke scale.
	<i>Miles.</i>						
Watertown.....	224	\$3.645	\$3.645	\$3.24	\$3.78	\$3.18	\$3.175
Sioux Falls.....	237	3.985	3.78	3.51	3.985	3.385	3.24
Huron.....	294	4.185	4.185	3.78	4.255	3.655	3.645
Aberdeen.....	296	4.12	4.185	3.78	4.12	3.52	3.645

A strict application of a 60-cent differential under the present rates from Duluth would result in a lower rate from St. Paul to Aberdeen than to Huron, due to the fact that Aberdeen is nearer to Duluth than is Huron. From St. Paul, however, Aberdeen and Huron are practically equidistant, and under the proposals of complainant, as well as of the carriers, are accorded equal rates. It will be observed from the table on page 485 that if the carriers' coke scale now applying from Duluth is applied from St. Paul to the same destinations in South Dakota, the resulting rates will be substantially on a basis of 60 cents under Duluth and that the same rate will apply to Aberdeen as to Huron.

In the table below are shown the effective and proposed rates on coke from St. Paul to the Iowa points selected by complainant as representative, both as of the date of the hearing and at the present time:

	Distance.	Rate from St. Paul.		Rate proposed by carriers.		Rate proposed by complainant.	
		Aug. 25, 1920	Aug. 26, 1920	Aug. 25, 1920	Aug. 26, 1920	Aug. 25, 1920	Aug. 26, 1920
	<i>Miles.</i>						
Mason City.....	138	\$2.60	\$3.51	\$2.20	\$2.97	\$1.80	\$2.45
Charles City.....	143	2.60	3.51	2.20	2.97	1.80	2.45
Waterloo.....	205	2.60	3.51	2.30	3.005		2.97
Fort Dodge.....	210	2.80	3.78	2.50	3.375	2.20	2.97
Marshalltown.....	225	2.60	3.51	2.60	3.51	2.30	3.105
Cedar Rapids.....	255	2.60	3.51	2.60	3.51	2.30	3.105
Des Moines.....	258	2.80	3.78	2.60	3.51	2.30	3.105
Sioux City.....	267	3.20	4.32	2.80	3.78	2.60	3.51
Clinton.....	310	3.50	4.70	2.80	3.78	2.60	3.51
Council Bluffs.....	346	3.30	4.455	3.30	4.455	3.00	4.05

In the *Holmes & Hollowell Case* we found that the rates on coal from the head of the lakes to points in the state of Iowa had not been shown to be unreasonable or unduly prejudicial, and the distance scale of rates prescribed to Minnesota and South Dakota points was not prescribed to Iowa points. However, the rates here under consideration on coke from St. Paul to Iowa destinations are clearly out of line with the rates on coke established by the carriers from Duluth to Minnesota and South Dakota as a result of that decision.

The rate of \$3.30 proposed by the carriers from St. Paul to Council Bluffs was the rate from Chicago to that point, 484 miles, while the rate of \$3 requested by complainant was the rate from St. Louis, 416 miles. The proposal of the St. Paul district freight traffic committee was to make the rate from St. Paul to Council Bluffs \$3 and that rate, as increased 35 per cent or to \$4.05, is substantially the rate which would result from the application of the carriers' coke scale for the distance of 346 miles from St. Paul.

The rate of \$2.60 proposed by complainant to Clinton and Sioux City is the same as is proposed to Chicago and Milwaukee. In pro-

posing a rate of \$2.80 from St. Paul to Sioux City defendants took into consideration the rate of \$2.80 from the Sugar Creek district of Kansas City, Mo., where petroleum coke competitive with complainant's by-product coke is manufactured. The short-line distance from Kansas City to Sioux City, involving a two-line haul, is 24 miles greater than the short-line distance from St. Paul to Sioux City for a single-line haul.

The carriers' coke scale as now applied to South Dakota points would result in a rate of \$2.36 to Mason City and \$2.50 to Charles City, or an average rate of \$2.43, observing the full differential of 27 cents over anthracite coal applied to the farther distant South Dakota points. The latter rate is equivalent to \$1.80 at the time of the hearing, which was the rate proposed by complainant.

On the whole the rates proposed by complainant to Iowa points more nearly comport with the interstate rates established from Duluth to Minnesota and South Dakota points as a result of the *Holmes & Hallowell Case*.

The \$2.60 rate proposed by complainant from St. Paul to Chicago, now \$3.51, is, as previously stated, the rate in the reverse direction from Chicago to St. Paul. Defendants explain that the rate from Chicago to St. Paul is the result of early competition of the Chicago-St. Paul lines for traffic to Montana and other western smelting territory, before coke was produced at Milwaukee, Duluth, and St. Paul. They also refer to the fact that the rates on coal are higher from St. Paul to Chicago than from Chicago to St. Paul. The \$2.60 rate from Chicago to St. Paul represents the general increases over the rate of \$1.85 found justified in *Rates on Coke from Chicago and Peoria, Ill.*, 32 I. C. C., 543, in which proceeding we also prescribed as maximum a rate of \$2.15 from Chicago and Milwaukee to Duluth.

The record contains comparisons by both parties of rates from St. Paul to the destinations here involved with rates between other points, many of them from the Connellsville coke district to points in central and trunk line territories. As compared with the rates cited by defendants from the Connellsville district, and taking into consideration the more favorable transportation conditions in that district, many of the rates proposed by them do not appear unduly high in and of themselves, but giving due weight to these and other comparisons of record, including the relative rates in effect from Duluth, Milwaukee, Chicago, and St. Louis to the destinations in question, we are of opinion and find that the rates now in effect from St. Paul to the Iowa, Illinois, South Dakota, Michigan, and Wisconsin points under consideration are unreasonable and unduly prejudicial, and defendants will be required to establish for the future rates on coke, in carloads, from St. Paul to Iowa, Illinois, and

South Dakota points which shall not exceed those constructed in accordance with the bases shown below, which we find will be just and reasonable maximum rates, viz:

From St. Paul, Minn., to—	Rate.	From St. Paul, Minn., to—	Rate.
<b>Iowa:</b>		<b>Iowa—Continued.</b>	
Mason City.....	\$2.43	Sioux City.....	\$2.51
Charles City.....	2.43	Clinton.....	2.51
Waterloo.....	2.97	Council Bluffs.....	4.05
Fort Dodge.....	2.97	<b>Illinois:</b>	
Marshalltown.....	3.105	Chicago.....	2.51
Cedar Rapids.....	3.105	Moline.....	2.51
Des Moines.....	3.105		

Rates from St. Paul to all points in South Dakota east of the Missouri River shall not exceed rates constructed on basis of the distance scale of rates on coke contemporaneously in effect from Duluth to the same destination territory.

Defendants will be expected promptly to establish, subject to the general increases of 1920, rates not higher than those proposed by them at the hearing to points in Michigan and Wisconsin, observing the rate of \$3.51, prescribed herein to Chicago, as maximum to Milwaukee and other points in Wisconsin now taking the same rate as Chicago, including Madison, Janesville, Lone Rock, Portage, Ripon, Oshkosh, and Shawano.

Rates to points in Iowa, other than those named, should be re-adjusted in harmony with the rates prescribed. While the South Dakota intervener requests that we also fix rates to points in South Dakota west of the Missouri River, no such points are embraced in the representative points selected by complainant and the record does not afford an adequate basis for determining the rates to that territory. The revision required in the rates to points east of the river will necessitate a revision in the rates to points west of the river, where the transportation conditions are admittedly less favorable. It is believed that for the present this is a matter which should be left to the initiative of the carriers.

There remains for consideration the claim for reparation. With respect to the rates to points in Minnesota in effect during federal control, the principal basis of complainant's claim is that they exceeded the contemporaneous rates on anthracite coal. Since the hearing the Minnesota commission has required the establishment of rates on coke not higher than on anthracite coal. Complainant also shows that for distances of 70 miles and over the rates on coke in Minnesota were higher than on sand, gravel, brick, cement, and other heavy-loading commodities. The loading is materially less on coke than on anthracite coal and the car earnings are less, even when the rate per ton is materially higher. The anthracite coal rates in Minnesota are

not shown to have been an appropriate measure of the rates on coke in that state during the period of federal control, and the record otherwise does not establish that the rates on coke during that period were unreasonable.

Up to the time that complainant's plant commenced operations at St. Paul there was practically no movement of coke within the state of Minnesota, and no demand for the establishment of commodity rates, class-D rates being applicable. In February, 1918, distance commodity rates were established from St. Paul to Minnesota points which rates, while said to have been not entirely satisfactory to complainant, were accepted by it as meeting its immediate needs. Later complainant sought to extend the market for its coke to points in adjoining states to which there had previously been little, if any, movement from St. Paul or other Minnesota points and consequently no demand or necessity for the establishment of commodity rates or for giving consideration to the rates from St. Paul. In the *Holmes & Hollowell Case* a general readjustment was required in the rates on coal from Duluth to points in South Dakota and other states which carried with it a corresponding readjustment of the rates on coke from Duluth. We have found that a similar readjustment of coke rates should be made from St. Paul to South Dakota and Iowa points and that to Michigan and Wisconsin points commodity rates should be established in lieu of the present rates, which are generally on the class-D basis. No reparation was awarded in the *Holmes & Hollowell Case* on the ground that no damage had been shown on account of the undue prejudice found to exist and that we were prescribing a new rate adjustment. For similar reasons, and for the further reason that we are of opinion and find that under all of the circumstances the rates assailed were not intrinsically unreasonable during the period for which reparation is sought, no reparation will be awarded in this proceeding.

The *Holmes & Hollowell Case* is now pending further consideration on reargument and our findings herein are without prejudice to such modification, if any, as may become necessary as the result of any modification of our conclusions in that proceeding.

An appropriate order will be entered.

66 I. C. C.

No. 11800.  
BELBER TRUNK & BAG COMPANY  
v.  
WEST JERSEY & SEASHORE RAILROAD COMPANY  
ET AL.

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*Submitted January 17, 1922. Decided February 18, 1922.*

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Class and commodity rates to and from Woodbury, N. J., found not to be unreasonable, unduly prejudicial, or unjustly discriminatory. Complaint dismissed.

*Allen S. Olmsted, 2nd, L. Pearson Scott, William A. Glasgow, jr., and Mowitz & Solis-Cohen* for complainant.

*Henry Wolf Biklé and Edwin A. Lucas* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by the complainant to the report proposed by the examiner and the case was orally argued before us.

Complainant, a corporation engaged in the manufacture of trunks at Woodbury, N. J., alleges that the interstate class and commodity rates to and from Woodbury are unreasonable, unjustly discriminatory, and unduly prejudicial, as compared with interstate rates to and from Philadelphia, Pa., and points taking the same rates. The prayer is for reparation on past shipments, and the establishment of reasonable and nondiscriminatory rates for the future. Unless otherwise stated, rates referred to herein are class rates in cents per 100 pounds.

Woodbury is on the West Jersey & Seashore, 8 miles south of Camden, N. J., which takes the same interstate rates as Philadelphia. Complainant's plant was recently established at Woodbury, which has a population of 5,800, and it is the only manufacturing industry at that place.

The trunks produced at this plant are shipped to all parts of the country in carload and less-than-carload lots. On the carload traffic, the second-class rates governed by official classification are applicable; less-than-carload shipments move at one and one-half times first class. The materials, both raw and fabricated, which go into the construction of complainant's products move at class rates,

and originate at points in many states. Complainant also specifically attacks the commodity rates on coal which it receives from Maryland and Pennsylvania mines, and on lumber from the south.

On brief complainant states its position as follows:

The question in this case is whether Woodbury, N. J. \* \* \* should pay the Philadelphia-Camden rates or an arbitrary over and above the Philadelphia-Camden rates.

Complainant's comparisons are chiefly of second-class rates. These are selected because of the apparent importance in the movement of trunks in carload lots. The following table, compiled from its exhibit, is illustrative of the present rate situation:

	Distance from Camden.	Rates.				Difference in favor of Camden.	
		From Camden.	To Camden.	From Wood- bury.	To Wood- bury.	On out- bound rates.	On in- bound rates.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Boston, Mass.....	306	66.5	66.5	70	70	3.5	3.5
Stamford, Conn.....	127	52.5	52.5	63	63	10.5	10.5
Portland, Me.....	436	76.5	78.5	76.5	79	-----	5
New York, N. Y.....	99	38	38	46	46	8	8
Wilkes-Barre, Pa.....	205	63	63	63	63	-----	-----
Pittsburgh, Pa.....	398	75	75	82	82	7	7
Chicago, Ill.....	856.4	132.5	136.5	139.5	145.5	7	7

Complainant urges that as it is less expensive to make delivery to Woodbury than in the expensive terminals of Philadelphia, Woodbury should be accorded the flat Philadelphia basis of rates on all inbound and outbound traffic. It shows that the distance to New York from Woodbury is less than that to New York from Philadelphia. Complainant also stresses the fact that Woodbury is only 2.75 miles from Westville, N. J., which is the southern boundary of the Philadelphia rate zone or district, and that there is no difference in the transportation conditions affecting the movement to Woodbury from those applying to Westville, except the haul of less than 3 miles.

Complainant states that Burlington, N. J., 18 miles north of Camden, has the Philadelphia basis of rates, and that other points geographically located with relation to Philadelphia and Camden, in a position not dissimilar to that of Woodbury, operate at less disadvantage in rates than Woodbury. Thus reference is made to points south and west of Philadelphia, which take the same rates as Philadelphia on traffic from and to central territory, and slight amounts higher on traffic from and to New England. It is further shown that manufacturers located at points in southern New Jersey on the West Jersey & Seashore, more distant from Westville than is



Woodbury, receive and ship much of their important traffic on the flat Philadelphia basis. This is accomplished by a set of commodity rates, specially established to accommodate the traffic of several large manufacturers and producers. In some cases these commodity rates are so constructed that these more distant points have rates which are only small amounts higher than Philadelphia on important traffic. Complainant lays great emphasis on the fact that a large oil concern at Paulsboro, N. J., a station on the West Jersey & Seashore, 14 miles south of Camden, was given the Philadelphia basis on some of its traffic.

In explanation of the Philadelphia rate group or district, defendants state that, generally speaking, except on traffic from and to central territory or from and to points beyond the eastern termini of the trunk lines, the Philadelphia rate group has no definite meaning. For more than 30 years it has been the practice of defendants to group the territory, generally speaking, from the Susquehanna River to Philadelphia and apply the Philadelphia basis of rates thereto on traffic to and from central territory. Rates between points east of the Susquehanna River are not so grouped, as this is considered "short-haul territory" and rates are varied in amounts depending on the point of origin and destination.

Distance and geographical location with relation to Philadelphia was the original reason for including points north, south, and east of Philadelphia. Camden was included because of its location, being considered from a commercial standpoint as a part of Philadelphia. In addition rail-and-water competition via Norfolk, Va., from and to the west is referred to as a consideration which affected Camden rates. Burlington on the Delaware River was included in 1902, because of boat-line competition. In 1915, Westville was accorded the Philadelphia basis of rates to and from central territory and to and from other points for the special purpose of locating a canned-soup concern at that place. Westville is on the Delaware River within the lighterage limits of Camden. Defendants consider their extension of the Philadelphia basis of rates to Westville as a mistake and contend that they should not be compelled to include Woodbury.

Defendants contend that there is no compelling reason why Woodbury should be given the Philadelphia basis; that rates thereto and to points beyond in southern New Jersey are constructed in conformity with a basis in existence for many years. They point out that for over 30 years class rates between central territory and stations on the West Jersey & Seashore beyond Camden and in southwestern New Jersey were made 5 cents higher on all the classes than were the rates to and from Philadelphia. Points in south-

eastern New Jersey took rates 7 cents higher than Philadelphia. The rates at the time of the hearing from central territory to Woodbury were 9 cents higher than to Philadelphia; and 7 cents higher than Philadelphia westbound to central territory. This variation in amount is stated to result from the manner in which the compilers of the eastbound tariffs interpreted general order No. 28 of the Director General of Railroads. That is, the eastbound rates reflect an increase in the arbitrary pursuant to both general order No. 28, and *Increased Rates, 1920*, 58 I. C. C., 220, whereas the westbound arbitrary was only given the latter authorized increase. Defendants stated at the hearing that it was their intention to restore the former uniformity by making the differences 7 cents in both directions, and this has since been done.

Defendants observe that in a recent case, *Du Pont de Nemours v. Director General*, 64 I. C. C., 14, we found that an arbitrary of 5 cents on salt in carloads, a low-grade commodity, over the rate to Philadelphia from points in New York to Paulsboro and other points on the West Jersey & Seashore was not unreasonable although the carriers had voluntarily reduced the arbitrary to 2 cents.

Defendants compare the spread of the Woodbury rates over the Philadelphia rates, with the spread between rates in other and contiguous groups, where rates break. Thus they cite the group basing on New York, which eastbound from central territory takes rates 9 cents on all the classes higher than New York, and westbound 7 cents higher than the New York basis.

It is further contended that the manner of constructing rates between southern New Jersey and central territory is logical, as Philadelphia is properly considered a gateway at which rates to and from the latter territory should break, and as this group basis has been long maintained, that it should not be disturbed on complainant's showing, citing *Galloway Coal Co. v. A. G. S. R. R. Co.*, 40 I. C. C., 311, in which we said at page 320:

Groups long maintained, \* \* \* are presumably fair and are not to be disrupted unless substantial justice clearly requires it.

Evidence bearing on the financial condition of the West Jersey & Seashore is also offered. An operating deficit of \$674,595.26 is shown for the first nine months of 1920. It is also pointed out that the greater proportion of the traffic on this road is passenger, the revenue from freight traffic being only 29 per cent of the total revenue received from all traffic. Stress is laid on this showing in view of the fact that the increases authorized in 1920 in passenger traffic were 20 per cent as compared with 40 per cent authorized on freight traffic.

In *Newport Mining Co. v. C. & N. W. Ry. Co.*, 33 I. C. C., 645, we stated at page 657:

The system of group-rate making was early recognized by the Commission as proper except where some shippers or consignees are really damaged by the rates thus afforded while others are correspondingly benefited, and the Commission has consistently refrained from breaking up a group where it has not been made to appear that the party seeking such action is actually damaged by the discrimination that results from the group rate.

It is true that all groupings for rate purposes are more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. *Clyde Coal Co. v. P. R. R. Co.*, 23 I. C. C., 135, 138.

No substantial evidence has been offered to show that the commodity rates on coal and lumber to Woodbury are unreasonable, or that class rates between Woodbury and other parts of the country not made according to the group basis are unreasonable. This record does not indicate that any competitor of complainant is benefited by the present adjustment to the corresponding disadvantage of complainant.

We find that the rates complained of were and are not unreasonable or otherwise unlawful.

The complaint will be dismissed.

63 I. C. C.

No. 11857.

IOLA CEMENT MILLS TRAFFIC ASSOCIATION ET AL.  
v.  
DIRECTOR GENERAL, AS AGENT, CASSVILLE & EXETER  
RAILWAY COMPANY, ET AL.

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*Submitted January 18, 1922. Decided February 18, 1922.*

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1. Rates on cement, in carloads, from points in the Kansas gas belt and from Dewey, Okla., to points in Nebraska, South Dakota, Wyoming, Iowa, and Missouri found unreasonable. Reparation awarded.
2. Intrastate rates, during federal control, on cement, in carloads, between points in Kansas, found not unreasonable or otherwise unlawful.

*B. L. Glover* for complainants.

*T. J. Norton* and *F. E. Andrews* for defendants.

*F. C. Taylor* for Missouri Portland Cement Company, and *Frank Willicke* for Continental Cement Company, interveners.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4.

Exceptions were filed by complainants and defendants to the report proposed by the examiner and the case was orally argued.

Complainants are the Iola Cement Mills Traffic Association, a voluntary association of cement manufacturers, various corporations hereinafter mentioned, operating cement mills in southeastern Kansas and at Dewey, Okla., and Sunderland Brothers Company, a corporation dealing in cement at Omaha, Nebr. They allege that the rates in effect August 8, 1918, to and including February 28, 1920, on cement, in carloads, from cement-producing points in southeastern Kansas and from Dewey to points in Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming were unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the fourth section of the act. The proceeding involves only a claim for reparation on shipments moving under these rates, covered by exhibits filed in the record. The Missouri Portland Cement Company of St. Louis, Mo., and the Continental Cement Company intervened but ask no affirmative relief.

The points at which complainants' cement mills are located and from which the shipments moved are Chanute, Fredonia, Mildred,  
66 L. C. C.

Humboldt, Iola, and Independence, Kans., and Dewey, hereinafter collectively referred to as the gas belt. The rates charged were established August 8, 1918, following *Western Cement Rates*, 48 I. C. C., 201, and *Cement to Montana*, 48 I. C. C., 402, decided in January and February, 1918, hereinafter referred to as the cement investigation. We there prescribed maximum rates for the interstate transportation of cement within western trunk line territory and between points in western trunk line territory and certain other territories adjacent thereto, including the territory here involved. The territory under consideration was divided into zones or scale territories numbered, respectively, I, II, III, and IV, the specific limits of which are defined in the reports. For scale-I territory, which embraced substantially all of Illinois and a narrow strip of southern Wisconsin, we prescribed a basic scale of distance rates. For scale-II territory, which may be roughly defined as that territory north and west of scale-I territory and east of the Missouri River, a scale of maximum distance rates 20 per cent higher than the basic scale was prescribed. Scale-III territory lies generally west and south of the Missouri River, including southwestern Missouri and those portions of Kansas, Nebraska, and South Dakota lying east of a line extending from the southern boundary of North Dakota through Aberdeen and Mitchell, S. Dak.; O'Neill and Hastings, Nebr.; and Salina and Hutchinson, Kans.; to the Oklahoma-Kansas state line. It embraces gas-belt points, Dewey being included by irregular projection of the southern boundary. Scale-IV territory included those portions of Kansas, Nebraska, and South Dakota, not included in scale-III territory, the eastern part of Colorado, and certain portions of Wyoming and Montana. The rates prescribed for application in scale territories III and IV were, respectively, on higher bases than the rates in scale territories I and II, but did not constitute fixed percentages of the basic scale.

The order provided that the scale-II rates should apply on traffic moving from the gas belt into the scale-II territory, that the distance via "short-line workable routes" be used by the carriers as the measure of the scale rates; that no distinction be made in rates for hauls over more than one line; and that the carriers should establish through routes and joint rates via all reasonably available direct lines. The carriers construed "short-line workable routes" to mean the short-line distances by way of existing routes ordinarily and customarily used and in connection with which they had divisions, and they published rates based on such distances. The order also provided that in establishing rates between points in territories of different rate levels, the rate for the entire distance should be calculated under the scale applicable in each of such respective territories, the

average of the rates thus obtained to be observed as a maximum. In establishing rates between the gas belt and points in Nebraska, Wyoming, and South Dakota the carriers used the distances over routes through Kansas City, Mo., and Omaha, extending in part through scale-II territory, but applied the higher scale-III rates for the entire distance. Complainants protested the rates before they became effective, but they were not suspended as the principal carriers were under federal control. Thereafter we received numerous complaints from shippers directed against the methods used in fixing the distances upon which the rates between points in the different territories were based. We directed the attention of the carriers to the fact that the published rates between points in the different territories, particularly from the gas belt to points in scale-III territory and west thereof, applying through scale-II territory, were not based upon an average of scale II and the higher scale or scales. The proceeding first referred to was subsequently reopened for further consideration of certain matters, and the parties were cited to show cause why in the application of the scales the shortest possible route between points of origin and points of destination should not measure the distance which should determine the rate. In the supplemental report of February 17, 1919, 52 I. C. C., 225, we said:

What the Commission had in mind was the shortest distance via reasonable and practicable routes. Such routes might or might not be the routes via which the carriers ordinarily moved the traffic. They might or might not be the shortest possible routes. It was expected that fair judgment would be exercised in ascertaining each short-line workable route, and that when such route had been ascertained the distance via that route would be the measure of the rate. \* \* \*

We are of the opinion that distance via the shortest possible routes embracing as a maximum the lines or parts of lines of no more than three carriers via existing connections for interchange of carload traffic should be used as the measure of the scale rates in lieu of the short-line workable route distance prescribed by our previous report and order \* \* \*

The rates under our original order were established August 8, 1918, and as a result of the supplemental proceeding they were revised February 29, 1920, the termination of federal control. This revision had the effect of reducing the rates from the gas-belt producing points to many points in Nebraska, South Dakota, Iowa, Wyoming, and Missouri. These reductions, ranging from 0.5 cent to 4 cents per 100 pounds, resulted from basing the rates on distances over shorter routes through Superior, Nebr., Leavenworth, Kans., and other junction points, and in instances where the short-line distances made through scale-II territory, in basing the rates on the average of the scales for the different territories. While complainants con-

tend that these rates did not fully conform to the order in the original case, they ask reparation only on basis of the rates established February 29, 1920.

In the original proceeding we refused to disturb the existing adjustment under which the various mills within the Kansas gas belt, including Dewey, had the benefit of the same rate to interstate destinations, but in establishing the distance rates the carriers made them effective from Dewey to points in Kansas, although continuing the then existing group rate to those destinations, intrastate from the other gas-belt producing points, and interstate from Dewey. As the distance rates to many of those destinations were lower than the group rate and the lower rate applied, the adjustment was thereupon disturbed and the resulting rates from Dewey were lower than from several intermediate Kansas producing points. Effective February 29, 1920, the previously existing grouping of gas-belt points, including Dewey, was restored, and except to the extent departed from in such grouping, the interstate scale of distance rates prescribed in the cement investigation was made applicable from all producing points in the gas belt to Kansas destinations. This revision resulted in reductions in many of the rates between Kansas points. However, it appears that to a great number of Kansas destinations increases resulted by the application of the interstate scale, in lieu of the then existing intrastate rates, and it is testified for defendants that shortly after August 8, 1918, when the distance scale was established from Dewey, the carriers attempted to apply the same scale from the Kansas producing points to Kansas destinations, and that scale would probably have been established but for the opposition of Kansas interests, including those here represented. Complainants have not shown that they were subjected to damage by reason of lower rates contemporaneously maintained from Dewey and the record does not warrant a finding that the intrastate rates assailed were unreasonable.

Defendants made no effort to justify the establishment of rates between the gas belt and points in scale-III territory based on scale-III rates when the shipments moved through scale-II territory. They urge that as the Missouri River is the boundary line between those respective territories, they were justified in using scale-III rates "where the traffic was hauled en route along the boundary line between scale-II and scale-III territories," and that it was supposed that a full and satisfactory explanation was made of that situation in the supplemental proceeding. However, the fact that such rates did not conform to our finding in the original case is obvious and is emphasized in the supplemental report.

Contrasted with the carriers' refusal to establish rates via the more direct lines through Superior, Leavenworth, and other junctions, from the gas belt to the destinations under consideration, it appears that they contemporaneously established rates, based on shorter routes, from Mason City, Iowa, and other competing cement-producing points to the same destination territory. Thus, the rate from Mason City to Cadams, Nebr., was made 16 cents, based on the mileage of the Chicago Great Western to Omaha and the Chicago & North Western beyond, 390 miles, notwithstanding the fact that the North Western serves Mason City and the distance therefrom over that carrier's rails to Cadams is 494 miles and the rate for that distance was 18.5 cents. The same plan is claimed to have been used from other competing cement-producing points. As the rates to points beyond Superior, established August 8, 1918, were made applicable through that junction, the Superior route has been open at least since that date, and it is conceded that the rates originally established under the scale prescribed in the cement investigation between the gas belt and points in Nebraska and other states would have been based on the mileage through Superior and other direct-line junction points but for the fact that the Burlington and the North Western demanded the same divisions beyond such junctions as accrued to them under the longer hauls through Kansas City and Omaha.

The rates from points in Illinois, prescribed in the original proceeding, were lower than from points in the other territories, but in the supplemental decision the carriers were permitted to apply scale-II rates, 20 per cent higher than scale-I rates, from and to points in that state. Directing attention to the changes there authorized, defendants contend that the entire proceeding, including the supplemental proceeding, was in the nature of a general revision, including both increases and reductions, and that no reparation should be awarded. *Investigation of Alleged Unreasonable Rates on Meats*, 28 I. C. C., 332, *Delaware, Lackawanna & Western Coal Co. v. R. R. Co.*, 46 I. C. C., 506, and other cases are cited, but these cases do not support their position. In establishing rates between the gas belt and points in Nebraska, South Dakota, Iowa, Wyoming, and Missouri the carriers did not comply with the original order in the cement investigation. These rates were based on distances via circuitous routes in order to protect or foster the interests of cement-producing points located on the destination lines. Moreover, while the defendants refused or neglected to establish the rates through direct-line junctions because they were unable to agree upon divisions, the principal carriers were at that time operated under a unified and coordinated national control, and not in competition.



The shipments, including those of Sunderland Brothers Company, which is the distributor for and acted as the agent of the Ash Grove Lime & Portland Cement Company, were sold at a delivered price, complainants' customers paid these charges and deducted them from the invoice price in making settlement, and complainants are therefore entitled to any reparation that may be awarded. *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531.

We find that the rates charged on the shipments which moved from Kansas producing points to destinations in Kansas, were not unreasonable or otherwise unlawful, but that the rates charged on the shipments under consideration which moved from Dewey and the Kansas origin points hereinabove specified, to destinations in Nebraska, South Dakota, Iowa, Wyoming, and Missouri were unreasonable to the extent that they exceeded the rates established February 29, 1920; that complainants, Ash Grove Lime & Portland Cement Company, Dewey Portland Cement Company, Fredonia Portland Cement Company, Great Western Portland Cement Company of Kansas, Monarch Cement Company, and Western States Portland Cement Company, made these shipments and paid and bore the charges thereon; that they were damaged to the extent that the charges paid exceeded those that would have accrued at the rates herein found reasonable; and that they are entitled to reparation, with interest. Such complainants should comply with rule V of the Rules of Practice.

66 I. C. C.

No. 12007.

E. I. DU PONT DE NEMOURS & COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, MILWAU-  
KEE & ST. PAUL RAILWAY COMPANY, ET AL.

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*Submitted November 26, 1921. Decided February 24, 1922.*

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Import rate on nitrate of soda, in carloads, from Tacoma, Wash., to Ramsay, Mont., found not unreasonable and present rate not unduly prejudicial. Complainant not shown to have been damaged by reason of any undue prejudice which may have existed during federal control. Complaint dismissed.

*Harvey S. Farrow and V. S. Thomas* for complainant.

*John F. Finerty, Thomas M. Woodward, and Fred W. Heid* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

Exceptions were filed by defendants to the examiner's proposed report, and the case was orally argued before us. We have reached a conclusion different from that recommended by the examiner.

Complainant, a corporation engaged in manufacturing explosives with a plant at Ramsay, Mont., alleges that the rate charged on 48 carloads of nitrate of soda from Tacoma, Wash., to Ramsay, during the period July 27, 1918, to November 20, 1919, both inclusive, was unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that it exceeded the rate contemporaneously applicable from San Francisco, Calif., to Bacchus, Utah. The prayer is for reparation and the establishment of a just and reasonable rate for the future. Rates will be stated in cents per 100 pounds.

Ramsay is on the Butte, Anaconda & Pacific, about 8 miles south of Butte, Mont. The shipments in question were imported from Chile and moved from Tacoma to Ramsay over the Chicago, Milwaukee & St. Paul to Butte, and the Butte, Anaconda & Pacific beyond, 668 miles. Charges were collected at the applicable rate of 50 cents. Complainant competes in manufacturing explosives at Ramsay with the Hercules Powder Company, which has a plant at Bacchus. The Hercules Powder Company imports nitrate of soda through the port of San Francisco.

66 I. C. C.

Prior to June 25, 1918, there was in effect on nitrate of soda from Tacoma to Ramsay an import commodity rate of 31.5 cents and a domestic rate of 40 cents. The import rate was established in 1916 at the request of complainant and was the same as the domestic rate contemporaneously in effect from San Francisco to Bacchus, a distance of 923 miles over the Western Pacific and the Bingham & Garfield. On June 25, 1918, as a result of general order No. 28 of the Director General of Railroads, import rates were canceled and the domestic rate from Tacoma, increased to 50 cents, became applicable on import shipments. The domestic rate from San Francisco to Bacchus was increased by 25 per cent to 39.5 cents. Before the rates prescribed in general order No. 28 became effective complainant protested against any greater increase in the Tacoma-Ramsay rate than was authorized to be made in the San Francisco-Bacchus rate. In October, 1918, it was advised by the Portland district freight traffic committee that no reduction would be made in the rate to Ramsay, but that an increase in the rate to Bacchus to place the two upon a parity was being considered.

Complainant cites rates applicable when the shipments moved on nitrate of soda for equal or greater distances from Atlantic and Gulf ports to destinations in central and western territory. In the absence of a similarity of transportation conditions these comparisons are of little value. In *The Northwestern Salt Cases*, 45 I. C. C., 12, we found that class-D rates on salt, in carloads, from Tacoma to points in Montana, including Ramsay, would be reasonable. The class-D rate from Tacoma to Ramsay in effect when complainant's shipments moved was 56.5 cents, or 5.5 cents greater than the rate on nitrate of soda. The value of nitrate of soda per net ton when the shipments moved varied from \$42.85 to \$43.59, while the value of common salt varied from \$3.72 to \$3.86. Defendants direct attention to the fact that salt is desirable traffic, while nitrate of soda, a dangerous article from a transportation standpoint, is undesirable. The present rate from Tacoma to Ramsay is 62.5 cents and from San Francisco to Bacchus 49.5 cents.

We find that the rate charged on complainant's shipments was not and that the present rate on nitrate of soda, in carloads, from Tacoma to Ramsay is not unreasonable, and that it is not shown that complainant has sustained damage by reason of any undue prejudice that may have existed when these shipments moved during federal control.

The Western Pacific and Bingham & Garfield are not parties hereto, and since the defendant carriers are not responsible for the rates maintained to Bacchus, there is no basis for a finding of undue prejudice with respect to the present rates. An order dismissing the complaint will be entered.

No. 12142.  
JOHN M. BUCKLAND  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted November 26, 1921. Decided February 18, 1922.*

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Rates on slag, in carloads, from Emaus, Pa., to West Collingswood, N. J., found unreasonable. Reparation awarded.

*Allen S. Olmsted, 2nd, and Saul, Ewing, Remick & Saul* for complainant.

*John F. Finerty and John C. Brooke* for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

By DIVISION 2:

Exceptions were filed by the defendant to the report proposed by the examiner and the case was orally argued before us.

Complainant, trading under the name of the National Slag Company, is engaged in crushing and selling slag, and has his main office in Allentown, Pa. By complaint, filed January 19, 1921, he alleges that the rate charged during the period November 1 to November 18, 1918, inclusive, for the transportation of slag, in carloads, from Emaus, Pa., to West Collingswood, N. J., was unjust and unreasonable. The prayer is for reparation. Rates are stated in amounts per net ton.

Emaus is a local station on the Perkiomen branch of the Philadelphia & Reading, and West Collingswood is served by the Atlantic City. For practical purposes the shipments may be regarded as a one-line haul of 79 miles.

When the shipments moved, a contractor was building Yorkship village, near the rail station West Collingswood, for the Emergency Fleet Corporation, United States Shipping Board. Complainant had undertaken to furnish this contractor with large quantities of crushed slag at a fixed price at point of origin, the contract also providing that complainant must ship from points from which the freight rate to destination was not more than \$1.30. Just prior to the movement of slag from Emaus to West Collingswood, here involved, complainant had been shipping slag, under his agreement, 66 I. C. C.

from Bethlehem, Pa., and other points from which a rate of \$1.30 applied. Because of pressure from the contractor for more frequent and regular deliveries, complainant made the shipments in question from Emaus, his crushing plants at Bethlehem and other points from which the rate was \$1.30 not being able to supply all that was needed. Charges were collected thereon at rates ranging from \$1.80 to \$2, the route of movement not appearing in all cases. Under the tariffs traffic from Emaus to West Collingswood must move via Perkiomen Junction, by which route the applicable rate was \$2, and our findings will be limited to shipments moving via such route.

Subsequently, in the same month these shipments moved, the \$1.30 rate was established from Emaus, to the basis of which complainant asks for reparation. Under the \$2 rate the per car earnings were \$103.31, equivalent to \$1.30 per car-mile for 79 miles. If the rate of \$1.30 had been in effect the average earnings per car would have been \$65.52, equivalent to 82.9 cents per car-mile.

We find that the rates charged on the shipments which moved via Perkiomen Junction were unjust and unreasonable to the extent that they exceeded a rate of \$1.30 per net ton; that shipments were made as described and complainant paid and bore the charges thereon; that he was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that he is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice. The statement under that rule should be confined to cars which moved via Perkiomen Junction.

66 I. C. C.

No. 12178.

CITY OF ABERDEEN, S. DAK.,

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & NORTH  
WESTERN RAILWAY COMPANY, ET AL.

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*Submitted July 20, 1921. Decided February 13, 1922.*

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Rates on coal-tar pitch, in barrels, in carloads, and coal tar, in tank-car loads, from Minneapolis, Minn., to Aberdeen, S. Dak., found unreasonable. Reasonable rates prescribed for the future, and reparation awarded.

*E. M. Hendricks* for complainant.*J. N. Davis* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner. We have reached conclusions differing from those suggested by him.

By complaint filed January 31, 1921, it is alleged that the class-D rates on coal-tar pitch, in barrels, in carloads, and coal tar, in tank-car loads, from Minneapolis, Minn., to Aberdeen, S. Dak., were and are unreasonable, unjustly discriminatory, and unduly prejudicial to Aberdeen and unduly preferential of Sioux Falls, S. Dak., and Sioux City, Iowa. We are asked to establish a reasonable rate for the future and to award reparation on one carload of coal-tar pitch shipped from Minneapolis to Aberdeen over the Chicago, Milwaukee & St. Paul, hereinafter called the Milwaukee, in April, 1919, and three tank-car loads of coal tar shipped from and to the same points over the same line in August and September, 1920. Rates will be stated in cents per 100 pounds.

Aberdeen is in northeastern South Dakota, distant from Minneapolis 286, 305, 308, and 358 miles by way of the Milwaukee, the Great Northern, the Minneapolis & St. Louis, and the Chicago & North Western, respectively. All of these carriers are defendants. The rates in issue were and are the same over the lines of all defendant carriers.

66 I. C. C.

Coal tar is a by-product of coal obtained in the manufacture of illuminating gas. Coal-tar pitch is the distillate or solid form of tar which remains after certain oils have been extracted by a refining process. *Barrett Mfg. Co. v. A., T. & S. F. Ry. Co.*, 47 I. C. C., 27, 28. These products are used by complainant in paving its streets. It paid 12 and 14 cents per gallon for the tar and 75 cents per 100 pounds for the pitch.

Coal-tar pitch, in barrels, in carloads, minimum 40,000 pounds, and coal tar, in tank-car loads, minimum the capacity of the tank, are rated class D in western classification. No commodity rates were or are in effect on these commodities from Minneapolis to Aberdeen. When the first shipment of tar and the carload of pitch moved the applicable class-D rate was 22.5 cents. This rate was increased on August 26, 1920, to 30.5 cents. The carload of pitch weighed 42,460 pounds and charges of \$95.54 were collected. The three carloads of tar weighed 286,020 pounds and charges aggregating \$797.40 were collected. Based upon the short-line distance, over the route of movement, the rates assailed yielded ton-mile revenues of 15.7 mills prior to August 26, 1920, and 21.3 mills thereafter. Complainant seeks reparation to bases of 18 cents on the shipments which moved prior to August 26, 1920, and 24.5 cents on those which moved thereafter. Such rates would bear the same relation to the contemporaneous class-D rates as did the commodity rates to Sioux Falls, and would have yielded 12.5 mills prior to August 26, 1920, and 17.1 mills on and after that date.

Complainant compares the present class rate with commodity rates from and to other points in the same general territory, as follows:

From—	To—	Short-line distance.	Rate.	Ton-mile earnings.	Percentage of class-D rate.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Per cent.</i>
Minneapolis, Minn.....	Aberdeen, S. Dak.....	286	30.5	21.4	100
Chicago, Ill.....	do.....	700	34	9.7	80
Milwaukee, Wis.....	do.....	615	34	11.1	80
Minneapolis, Minn.....	Sioux Falls, S. Dak.....	231	19	16.4	74.5
Do.....	Sioux City, Iowa.....	260	19	14.6	74.5
Duluth, Minn.....	Sioux Falls, S. Dak.....	343	19.5	11.3	63
Do.....	Sioux City, Iowa.....	422	19.5	9.2	63
Chicago, Ill.....	Sioux Falls, S. Dak.....	547	19.5	7.1	59.1
Do.....	Sioux City, Iowa.....	510	19	7.6	61.3
Fargo, N. Dak.....	Minneapolis, Minn.....	232	17	14.7	64
Grand Forks, N. Dak.....	do.....	310	19.5	12.6	72.5
Milwaukee, Wis.....	Fargo, N. Dak.....	623	34	11	73.5

Reference is made to a commodity rate of 30.5 cents from Duluth to Aberdeen, the same as the class-D rate from Minneapolis to the same destination. Complainant contends that transportation conditions are as favorable from Minneapolis to Aberdeen as from Minneapolis to Sioux Falls and Sioux City. It shows that commodity rates

on coal tar and pitch lower than the class basis are published from and to many points in western trunk line territory. Complainant expects to make further shipments of these commodities.

Defendants' witness testified that the general basis of rates on coal tar and pitch from Minneapolis to points on the Milwaukee east of the Missouri River in South Dakota is class D. To points west of the Missouri River in South Dakota, North Dakota, and Montana, commodity rates lower than class D are published from Chicago, Minneapolis, Duluth, and other points. Rates generally from Chicago to Sioux Falls are made with relation to rates from the same point to Sioux City. In *Daniels v. C., R. I. & P. Ry. Co.*, 6 I C C., 458, we found that class rates from Chicago to Sioux Falls should not exceed 104 per cent of the corresponding rates from Chicago to Sioux City. It is understood that this relationship still obtains as to the first-class rates. The Sioux City rates, defendants contend, were established on a depressed basis because of competition with other Missouri River cities. Defendants' witness testified that his investigation disclosed no movement under the commodity rates from Chicago to Aberdeen, from Duluth to Aberdeen, or from Duluth and Minneapolis to Sioux Falls and Sioux City.

In *Barrett Mfg. Co. v. A., T. & S. F. Ry. Co.*, *supra*, decided October 9, 1917, the rates on these commodities from Utah common points to Colorado common points were found unreasonable to the extent that they exceeded 30 cents. This rate for the average short-line distance of 647 miles yielded 9.3 mills per ton-mile, and is the equivalent of a rate of 37.5 cents yielding earnings of 11.6 mills per ton-mile after the general rate increase of June 25, 1918. When allowance is made for application of the principle that as distance increases earnings per ton-mile should decrease, that rate is somewhat higher than those requested in the instant case; but the transportation here under consideration is through a prairie country. In the *Barrett Case* we said, page 30:

Between Utah and Colorado common points the Rocky Mountains are crossed and the adverse conditions result in higher operating expenses and warrant higher charges than would be justified for a prairie haul.

We find that the rates assailed were not and are not unjustly discriminatory or unduly prejudicial, but that they were, are, and for the future will be unreasonable to the extent that they exceeded, exceed or may exceed 18 cents per 100 pounds prior to August 26, 1920, and 24.5 cents per 100 pounds on and after that date; that complainant made the shipments as described and paid and bore the charges thereon, and has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to repara-



tion from the Director General, as Agent, in the sum of \$19.11, with interest, and from the Chicago, Milwaukee & St. Paul Railway Company in the sum of \$157.54, with interest.

An appropriate order will be entered.

HALL, *Commissioner*, dissenting:

The general basis of rates on these commodities in this territory is class D. The only exceptions shown of record are, so far as we know, paper rates. The movement consisted of four carloads in two years, and for the future is not expected to exceed three or four carloads a year. The facts were different in *Barrett Mfg. Co. v. A., T. & S. F. Ry. Co.*, 47 I. C. C., 27.

In my opinion class-D rates were properly applicable to these isolated shipments and the complaint should be dismissed.

66 I. C. C.

No. 12374.

WOFFORD OIL COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, NEW ORLEANS &  
NORTHEASTERN RAILROAD COMPANY, ET AL.

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*Submitted January 21, 1922. Decided February 18, 1922.*

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Rates on gasoline, in tank-car loads, from Mereaux and North Baton Rouge, La., to Birmingham and Alabama City, Ala., found not unreasonable or otherwise unlawful. Complaint dismissed.

*O. L. Bunn* for complainants.

*John F. Finerty* and *E. C. Blanchard* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

No exceptions were filed to the report proposed by the examiner, but the case was orally argued before us.

Complainants allege that the charges collected on 78 tank-car loads of gasoline shipped from Mereaux and North Baton Rouge, La., to Birmingham and Alabama City, Ala., between August 1 and November 1, 1918, were unreasonable, unjustly discriminatory, and unduly preferential. The prayer is for reparation. Rates will be stated in cents per 100 pounds.

Charges were collected on the shipments involved at the applicable commodity rates of 41.5 cents to Birmingham and 42 cents to Alabama City. These rates were established pursuant to general order No. 28 and represented a 25 per cent increase over the rates in effect on June 24, 1918. On October 29, 1918, the rates were reduced to 37.5 cents and 38 cents, respectively, through the substitution of a flat increase of 4.5 cents in lieu of the 25 per cent increase prescribed by general order No. 28. It is to the basis of these subsequently established rates that reparation is sought.

Complainants' counsel predicates their case upon the assumption that the rates from Mereaux and North Baton Rouge prior to general order No. 28 were reasonable; that the increases effected by that order disturbed the preexisting relationship between these rates and other rates which was restored when the flat increase was made

effective on October 28, 1918, whereupon the rates from these points again became reasonable. Although it would appear that the moving cause for the complaint is the disturbance in relationship created by general order No. 28, no damage is sought by reason thereof, doubtless because complainants' rates were increased by amounts less than the rates from other more distant producing points. Their contention is that they suffered damage when the Director General's order substituting the horizontal increase for the percentage increase was made effective on or about August 1 in tariffs carrying rates from and to other points, whereas it was not until the last of October that it was made applicable from the points in question. This contention, without further evidence, of which there is none that we can take cognizance, does not establish any violation of the act to regulate commerce or the federal control act. We have repeatedly held in cases arising out of federal control that neither the percentage nor the amount by which a rate was increased under general order No. 28, or other freight rate authorities, constitutes proof of unreasonableness. Any general increase necessarily disturbs pre-existing rates, either by varying amounts, if it be a percentage increase, or by varying percentages, if it be a flat increase. The mere fact that some other shipper may have obtained a reduction in his rate prior to the date complainants obtained a reduction in their rates does not indicate that complainants paid unreasonable rates or were unduly prejudiced or in any way damaged within the meaning of the law.

The following table, based on an exhibit submitted by complainants, shows rates contemporaneously in effect on gasoline, in tank cars, from various points to Birmingham and Alabama City, as compared with the rates assailed:

From—	Effective date.	To Birmingham.			To Alabama City.		
		Distance.	Rate.	Ton-mile earnings.	Distance.	Rate.	Ton-mile earnings.
		<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>
Chicago, Ill. ....	June 25, 1918	649	61.5	19	653	67	20.5
Do. ....	Aug. 12, 1918	649	53.5	16.5	653	58	17.7
Buffalo, N. Y. ....	June 25, 1918	908	61.5	13.5	849	61.5	14.5
Do. ....	Aug. 28, 1918	908	53.5	11.7	849	53.5	12.6
Pittsburgh, Pa. ....	June 25, 1918	792	61.5	15.5	733	61.5	16.7
Do. ....	Aug. 28, 1918	792	53.5	13.5	733	53.5	14.6
Enid, Okla. ....	July 29, 1918	827	53.5	12.9	886	58	13.1
Guthrie, Okla. ....	do. ....	765	53.5	14	824	58	14.1
Tulsa, Okla. ....	do. ....	706	52.5	14.8	765	57	14.8
Muskogee, Okla. ....	do. ....	653	52.5	16	712	57	16
Oklahoma City, Okla. ....	do. ....	738	56.5	15.4	797	61	15.4
Louisiana points. ....	Aug. 1, 1918	<sup>1</sup> 484	49.5	20.5	<sup>1</sup> 543	50	18.4
Moravia, La. ....	June 25, 1918	355	41.5	23.4	414	42	20.3
North Baton Rouge, La. ....	do. ....	413	41.5	20.1	472	42	17.9

<sup>1</sup> Average.

It will be noted that the rates from Mereaux and North Baton Rouge were at least 8 cents lower than any of the rates with which they are compared, and that, distances considered, the ton-mile earnings thereon were not excessive.

We find that the rates charged were not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 11388.

PUBLIC SERVICE COMMISSION OF INDIANA ET AL  
*v.*  
ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY  
ET AL.

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*Submitted October 22, 1921. Decided February 14, 1922.*

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Class and commodity rates from points in Indiana to St. Paul and Minneapolis, Minn., which are higher than from points in Illinois and points on the west bank of the Mississippi River in Iowa and Missouri found unreasonable and unduly prejudicial to the extent herein indicated.

*A. B. Cronk* and *R. B. Coapstick* for complainants.

*A. B. Enoch* and *D. P. Connell* for defendants.

*P. W. Coyle* and *H. R. Brashear* for St. Louis Chamber of Commerce; *R. W. Ropiequet* for Eastside Manufacturers' Association and Greater Belleville Board of Trade; *L. B. Boswell* for Quincy Freight Bureau; *C. S. Bather* for National Furniture Traffic Association and Rockford Manufacturers' and Shippers' Association; *R. M. Field* for Peoria Association of Commerce; and *I. W. Preetorius* for Walsh Fire Clay Products Company, interveners.

REPORT OF THE COMMISSION.

*MEYER, Commissioner:*

The issues in this proceeding were made the subject of a proposed report. Exceptions were filed by defendants and interveners, and oral argument has been had.

Complainants allege that the class rates, governed by the official classification, from all points in Indiana (except points grouped with Chicago, Ill.) to St. Paul and Minneapolis, Minn., are unreasonable, unjustly discriminatory, and unduly prejudicial as compared with much lower class rates, governed by western classification, applying from all points in Illinois, and from St. Louis, Mo., and other points on the west bank of the Mississippi River in Iowa and Missouri, to the same destinations. Statements hereinafter made with respect to the rates from Illinois will include the rates from the Iowa and Missouri points. By amendment, allegations similar to the above are made with respect to the commodity rates from the Indiana points to St. Paul and Minneapolis on agricultural implements; band, bar, boiler, and rod iron and steel; nails and wire;

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new furniture; glass fruit jars; paper boxes; and matches, which rates are based on the combinations via Chicago or other junctions, and are lower than the class rates from and to the same points. Complainants have named as defendants all the principal carriers from the Illinois points as well as from the Indiana points, and ask that we prescribe a reasonable adjustment which will afford the Indiana points relatively the same basis of rates as may be applied from the Illinois points. Several organizations representing shippers at St. Louis and points in Illinois intervened in opposition to the relief sought. They strongly oppose any increases in their rates, particularly so far as a change in their relationship to Chicago is concerned. The present adjustment is of long standing, and increases such as would be necessary to bring the rates from the Illinois points up to a level of those from the Indiana points would be of considerable consequence. Rates are hereinafter stated in amounts per 100 pounds.

The following table, taken from data in the record, sufficiently illustrates the difference between the rates from Indiana points and those from St. Louis, Chicago, and Illinois points. First-class rates for comparable distances have been selected:

From Illinois and St. Louis.			From Indiana.			Rate difference against Indiana point.
	Dis- tance.	Rate.		Dis- tance.	Rate.	
	<i>Miles.</i>	<i>Cents.</i>		<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>
Chicago.....	300	101.5	Hartsdale.....	432	142.5	41
Peoria.....	421	101.5	South Bend.....	494	159	54.5
Springfield.....	498	101.5	Frankfort.....	545	160	53.5
Danville.....	532	106.5	Indianapolis.....	592	163.5	57
St. Louis, Mo.....	586	106.5	Vincennes.....	645	180	48.5
Mount Vernon.....	623	131.5	Evansville.....	678	180	45
Cairo.....	717	135				

The spread between the rates is wider than it would have been but for the fact that in recent years greater general increases have been made in the rates from the Indiana points than in those from the Illinois points. Prior to November 14, 1914, the first-class rate from Indianapolis to St. Paul was 18 cents higher than the corresponding rate from St. Louis. Under the various increases in rates since that date this difference has become 57 cents. The difference between the first-class rates from Chicago and from Indianapolis has during this period been increased from 21 cents to 62 cents.

The fact that the two sets of rates are not governed by the same classification is the cause of many discriminations that would not otherwise exist. The joint through class rates from Indiana points to St. Paul and Minneapolis are a reflection of joint through class

rates that were first published from eastern trunk line territory to meet competition via rail-lake-and-rail and via differential all-rail lines through Canada. Prior to January 1, 1900, the first-class rates, for example, from trunk line territory to St. Paul and Minneapolis, were made on the basis of local rates to Chicago, plus a proportional rate of 40 cents beyond. The 40-cent factor, which was 20 cents below the local rate, was published to draw to the Chicago-St. Paul lines traffic that might otherwise have moved from the east in connection with the competing lines referred to. On account of this competition, the carriers were unable to change the situation from most of trunk line territory, but on or after the above date joint through class rates from Rochester and Syracuse, N. Y., and points west were published based on the locals to Chicago plus 50 cents first class beyond. The competition from trunk line territory was reflected to some extent into central territory and rates were graded westward on the group basis until points near Chicago were reached where the influence of the trunk line adjustment having spent itself, joint through rates were constructed practically on the full combination on Chicago or Milwaukee.

The following table shows the extent to which the present joint class rates from Indiana are lower than the combination of locals to and from Chicago, as of August 25, 1920, plus 33½ per cent increase interterritorially authorized by us on July 29, 1920:

To St. Paul from—	Combination.	Joint through rate.	Difference.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Fort Wayne.....	172	158.5	13.5
Logansport.....	166.5	158.5	8
Muncie.....	180.5	163.5	17
Kokomo.....	170	163.5	6.5
Indianapolis.....	180.5	163.5	17
Terre Haute.....	178	163.5	14.5
Richmond.....	185	180	5
Evansville.....	191	180	11

It should be observed, however, that although the through rate from Indianapolis to St. Paul is 17 cents less than the combination of rates to and from Chicago, it is only 1 cent less than the combination on Danville; that the through rate from Terre Haute is 14.5 cents less than the Chicago combination, but 5 cents higher than the combination on Danville.

Defendants compare the rates assailed with higher rates for approximately equal distances from Indiana points to destinations west of the Mississippi River, based on the combinations of locals, and with higher rates to points south of the Ohio River also based on the combination of locals. They urge that the rates from Chicago

to St. Paul are depressed, having been influenced originally by competition of rail lines to the Mississippi River and boat lines beyond, as well as competition on the great lakes and active competition of rail lines; that the low level of the Chicago-St. Paul rates is also indicated by the fact that these rates also apply from points much nearer to St. Paul, including East Dubuque, Ill. Although Chicago, Peoria, and St. Louis are served by single lines operating to St. Paul, except the Chicago, Milwaukee & St. Paul by its control of the Chicago, Terre Haute & Southeastern, and the Chicago, Milwaukee & Gary, there are no lines reaching St. Paul which also serve Indiana, and a large majority if not all of the traffic from Indiana to St. Paul moves through Chicago. Defendants urge that the movement of traffic through Chicago, more especially less-than-carload traffic, involves handling equal to that of two terminal services, which is not necessary on traffic moving over single lines from Illinois points. However, it is stated by the carriers, though denied by the St. Louis interveners, that a large portion of the tonnage moves from St. Louis to St. Paul over lines operating via Chicago. The carriers therefore regard the combination of locals from Indiana points to St. Paul as the reasonable basis; and assert that reductions in rates from Indiana to St. Paul would force corresponding reductions from points in Ohio and Michigan, and that reductions to destinations would not be confined to St. Paul and Minneapolis, but would materially affect rates to intermediate points in Wisconsin.

The rates from the principal Illinois points are the same as or only slightly higher than from Chicago. The Chicago rate group extends as far south as Quincy, Springfield, and Decatur, and thus covers practically the whole northern half of the state where many of the large manufacturers and distributors are located. South of the Chicago group is the St. Louis group, which is accorded rates 5 per cent higher than those from Chicago. Farther south is the Centralia group, with rates 26 per cent higher than the Chicago rates, and the Cairo group with rates 32 per cent higher.

From Chicago, Peoria, and St. Louis single lines operate to St. Paul. There are lines from Peoria that do not serve Chicago and these lines make from Peoria the same rates as apply from Chicago. Indirect lines from Chicago blanket the Chicago rates over a considerable territory. The direct lines from St. Louis to St. Paul follow the Mississippi River practically the entire distance, but there are important lines which can participate in the St. Louis-St. Paul traffic only through Chicago, and these lines passing through Illinois, carrying the same rates as the direct lines, blanket the St. Louis rates at intermediate points and at related points.



The rates from the St. Louis group had their origin largely in water competition on the Mississippi River between St. Louis and St. Paul. The business of St. Louis in this territory is largely one of jobbing. The primary source of many of the commodities handled is New England and trunk line territories. In this jobbing business St. Louis meets the competition of Chicago, and the carriers leading from St. Louis for many years have endeavored to make such rates from St. Louis to St. Paul territory as would enable St. Louis to do business there in competition with Chicago.

The maintenance of the close relationship to Chicago regardless of the much longer hauls results in comparatively low rates from Illinois points to St. Paul, particularly from those in the Chicago and St. Louis groups, and the rates from Chicago to St. Paul and Minneapolis are themselves depressed.

Manufacturers and distributors in Indiana ship to St. Paul and Minneapolis and points taking the same rates or rates basing thereon in competition with parties located in Illinois. Evidence was offered as to pianos, washing machines, paper boxes, soap, electrical outfits, window glass, fruit jars, agricultural implements, automobiles, iron pumps, and several other articles, from various points. Not all articles moving at class rates shipped from Indiana points are shipped from Illinois points. Several of the Indiana shippers testified that their principal competition was with Chicago, and in some cases with shippers in Ohio and Michigan. St. Louis interveners assert that their competition is with Chicago, as is also the competition of complainants, and that the increase in rates from St. Louis and other points in Illinois would tend to exclude these points from the St. Paul market and would be of no benefit to complainants in Indiana who would still be obliged to meet the competition of Chicago and points in the Chicago group.

St. Louis and Illinois points compete with Chicago, and it is not clear why they should have rates the same as or but slightly higher than those from Chicago, while Indiana shippers pay almost the full combination of locals over Chicago. The contention of St. Louis dealers that an increase in rates from St. Louis to St. Paul would exclude them from that market indicates perhaps one of the reasons why they do not feel the competition of Indiana shippers whose rates are materially higher and tend to exclude them from the market.

Several plans of readjustment are suggested. Complainants would accept as reasonable the present 10-class scale, governed by western classification, from Chicago to St. Paul and Minneapolis, and for the longer hauls from the Indiana and Illinois points they would grade the rates upward by fixed mileage blocks, using the

same upward progression for both Illinois and Indiana. Defendants object to a scale prepared by complainants on the basis above indicated, because it would reduce the rates on low-grade freight from Indiana points, owing to the use of classes B, C, D, and E of the western classification in lieu of sixth class of the official classification, and also because it would disrupt and reduce rates to Wisconsin points, which are now made on combination via Chicago, Milwaukee, or other west-bank Lake Michigan ports.

The carriers have submitted a plan of revision which they contend should be put into effect in the event the present adjustment is found unlawful. Their plan apparently takes no account of water competition between St. Louis and St. Paul, and contemplates rates substantially higher than those at present in effect from and to those points. They concede that in many cases the rates from Illinois points are unreasonably low, both in and of themselves and as compared with the rates from Chicago. Just prior to the hearing, a committee of traffic officials of the carriers, called the standing rate committee, was detailed to work out some plan of readjustment that would be more in harmony with transportation conditions. Such a plan was prepared and submitted in this case. It is based on the present rates from Chicago to St. Paul and Minneapolis, as follows:

Classes.....	1	2	3	4	5	A	B	C	D	E
Percentage of first class.....	100	83.3	66.5	43.4	33.5	41.9	33.5	28.6	23.2	22.2
Rate.....	101.5	84.5	67.5	44	34	42.5	34	29	23.5	22.5

These rates would be continued, except as to fourth class. It will be noted that the fourth-class rate is but 43.4 per cent of the first-class rate. This is much lower than is generally found to be the case elsewhere, except in western trunk line territory. Fourth-class rates to points in Wisconsin are also relatively lower than elsewhere, because they are closely related to the rates to St. Paul and Minneapolis. Fourth-class rates in central territory, prescribed in *C. F. A. Class Scale Case*, 45 I. C. C., 254, are 50 per cent of the first-class rates, and when this scale, as increased following *The Fifteen Per Cent Case*, 45 I. C. C., 303, and under general order No. 28 of the Director General of Railroads, was extended to the Illinois district after the decision in *Illinois Classification*, 55 I. C. C., 290, it forced up the fourth-class rates from Chicago to points in Wisconsin. Later, the addition of the increases authorized in Ex Parte 74 created departures from the long-and-short-haul rule. It is now proposed to remedy this situation by making the fourth-class rates from Chicago 50 per cent of the first-class rates, or 51 cents. With this change the rates from Chicago to St. Paul and Minneapolis, as to classes below first, would

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be related to first class by approximately the same percentages as apply in the Illinois district.

Having fixed what was deemed the proper scale of rates for Chicago, the standing rate committee decided that the first-class rate from St. Louis and group to St. Paul and Minneapolis should be as much higher than the first-class rate from Chicago to these points as the first-class rate from Chicago to the Missouri River cities is higher than from St. Louis to the same points, 33.5 cents. This would make the rate from St. Louis to St. Paul and Minneapolis \$1.35 first class. Rates on the lower classes would be related to the first-class rate according to the percentage applied in connection with the class rates from Chicago.

At present there is no group between St. Louis and Chicago; and the proposal of the standing rate committee would create a new group, designated the Springfield group. The first-class rate from the Springfield group would be made the same differential over Chicago as is the Springfield-Missouri River rate under the Chicago-Missouri River rate, and rates for the lower classes would be made as above set forth. Appropriate changes would be made in the rates from and to related points, including a proper relation of rates from southern Illinois groups to the rates proposed from St. Louis.

The \$1.35 first-class rate proposed from St. Louis to St. Paul, a distance of 586 miles, is compared with \$1.35 first class from Chicago to Kansas City, 454 miles; Chicago to Omaha, 488 miles; Chicago to Sioux City, 510 miles; St. Louis to Sioux City, 508 miles; Omaha to St. Paul, 346 miles; and Omaha to Duluth, 497 miles; and the first-class rate of \$1.44 from Kansas City to St. Paul, a distance of 485 miles.

The St. Louis interveners, however, call attention to the fact that although the proposed first-class rates are the same, the percentage relation of the other classes to first class is higher in the proposed scale from St. Louis to St. Paul than in the scales referred to, more particularly third and fourth classes. For example, the proposed third and fourth class rates are 90 cents and 67.5 cents, respectively, and the corresponding rates from Chicago to Kansas City are 76.5 and 54 cents, respectively. These rates apply, however, over shorter distances, and in some instances materially shorter.

Commodity rates would be treated in substantially the same manner as class rates. The standing rate committee would restrict the size of the Chicago group so that it would not reach farther south than Streator, Pekin, and Peoria, Ill., and Burlington, Iowa.

In further support of the readjustment recommended by the standing rate committee it is shown that the short-line distances

from 10 representative points in the Chicago, Springfield, and St. Louis groups to St. Paul are as follows:

Chicago group.	Distance.	Springfield group.	Distance.	St. Louis group.	Distance.
	<i>Miles.</i>		<i>Miles.</i>		<i>Miles.</i>
Chicago, Ill. ....	398	Gibson City, Ill. ....	473	Sullivan, Ill. ....	508
Aurora, Ill. ....	393	Gilman, Ill. ....	473	Tuscola, Ill. ....	518
Joliet, Ill. ....	419	Monticello, Ill. ....	492	Sidell, Ill. ....	548
Streator, Ill. ....	404	Bloomington, Ill. ....	462	Altamont, Ill. ....	547
La Salle, Ill. ....	378	Lincoln, Ill. ....	465	Pana, Ill. ....	531
Peoria, Ill. ....	421	Decatur, Ill. ....	498	Vandalia, Ill. ....	543
Rockford, Ill. ....	388	Springfield, Ill. ....	500	Litchfield, Ill. ....	540
Galesburg, Ill. ....	388	Jacksonville, Ill. ....	486	Alton, Ill. ....	550
Clinton, Iowa. ....	326	Keokuk, Iowa. ....	416	St. Louis, Mo. ....	570
Burlington, Iowa. ....	352	Quincy, Ill. ....	438	Louisiana, Mo. ....	475
Average. ....	385	Average. ....	471	Average. ....	533

The average distance from the Springfield group to St. Paul is 124 per cent of that from the Chicago group, and from the St. Louis group to St. Paul, 138 per cent of that from the Chicago group. Using the first-class rates for comparison, it is found that the proposed rate of \$1.185 from the Springfield group to St. Paul is 116 per cent of the Chicago rate and that the proposed rate of \$1.35 from St. Louis to St. Paul is 133 per cent of the Chicago-St. Paul rate.

The Quincy Freight Bureau, of Quincy, Ill., an intervener, urges that Quincy is but little farther from St. Paul than is Peoria, and that its location entitles it to be placed in the Chicago group, as it has been for many years, rather than in the higher-rated Springfield group as proposed by the defendants. The short-line distance from Quincy to St. Paul is 438 miles and that from Keokuk, Iowa, also within the same proposed group, 416 miles. The distance from Chicago is 398 miles and from Peoria 421 miles. The Chicago group rates apply, however, from points much nearer to St. Paul than Peoria or Chicago, for example, East Dubuque, Ill., 255 miles, and Clinton, Iowa, 326 miles.

One member of the standing rate committee, representing the Chicago, Burlington & Quincy, was of the opinion that, considering the difference in distance, the rates from St. Louis as a "temporary expedient" should be about 20 per cent rather than 33½ per cent higher than the rates from Chicago, and in support of his position refers to the scales prescribed in *The Missouri River-Nebraska Cases*, 40 I. C. C., 201; *C. F. A. Class Scale Case*, *supra*; and *Memphis-Southwestern Investigation*, 55 I. C. C., 515, where for the corresponding difference in distance rates are about 20 per cent higher. However, these scales, like the standing rate committee's plan, were designed to meet the respective situations in the cases named, and are not necessarily to be taken as precedents in this case. Moreover,

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it should be remembered that the rates from Chicago had their origin in water competition, and it might be said that if St. Louis is to use those rates as a basis for its rates it should compute its distance via Chicago rather than via the more direct routes.

Reference is made to *Indianapolis Freight Bureau v. C., C., C. & St. L. Ry. Co.*, 16 I. C. C., 277, wherein we found in 1909 that relatively higher class and commodity rates from Indianapolis than from St. Louis to St. Paul and related points were justified. The conclusion in that case was based largely on the existence of actual or potential competition on the Mississippi River and the fact that the Chicago, Burlington & Quincy Railroad for its own purposes accorded St. Louis an adjustment of rates only slightly above those from Chicago and was not responsible for the higher rates from Indianapolis. Since then circumstances have changed. Water competition on the Mississippi River north of St. Louis is no longer recognized as a controlling force but is little more than potential. Moreover the difference in rates in favor of Illinois points has been greatly increased over that in effect at that time. Incidentally, the Chicago, Burlington & Quincy and other carriers now concede that their rates from St. Louis are too low, being less than for equal distances in central territory, where transportation conditions are more favorable.

In *Illinois Classification*, *supra*, at page 290, we said:

The consensus of view doubtless is, and we believe this to be correct, that the territory in the two states (Illinois and Indiana) is essentially similar in character and that the Indiana-Illinois line does not divide diverse transportation conditions.

The record in this case does not show such substantial difference in transportation conditions as to warrant a finding that rates from Illinois points to St. Paul and Minneapolis should be on a basis lower than rates from Indiana.

The undue prejudice herein found to exist can well be removed in part by the adoption of the plan suggested by the standing rate committee, except that it might be desirable at the same time to make not only the fourth-class rates but all the class rates from the Illinois points the same percentages of first class as now apply within the Illinois district. This would bring the relationships more nearly into line with those tentatively suggested for general application in the *Consolidated Classification Case*, 54 I. C. C., 1, 11. It could be done without making any serious or radical changes in the rates themselves, and would be a step toward greater simplicity and uniformity.

The defendants' proposals include changes in rates to Duluth and to destinations in intermediate and related territory. Some

readjustment of rates to such points will be necessary, but we are not prepared on this record under issues not directly including such points to either approve or disapprove such adjustments.

It is not understood that the differentials used by the standing rate committee in arriving at the rates from St. Louis and Springfield are to be fixed differentials, or that they shall at all times be the same as those from which they were derived.

A change in the rates from St. Louis to St. Paul would result in a corresponding change in rates to points on the Northern Pacific and Great Northern as far west as Montana, rates to these points being made on the St. Paul combination. If rates from Indianapolis to St. Paul were made the same as from St. Louis, rates to points in North Dakota and Montana would also be the same from both points, although the distance from St. Louis is in some instances less. The difference in distance from Chicago and St. Louis to St. Paul is 177 miles; to Oakes, N. Dak., 96 miles, and to Billings, Mont., the distance from Chicago is greater than from St. Louis. Situations such as this may require adjustment but constitute no reason why a proper relationship should not be provided to St. Paul.

On some articles, of which coffee may be taken as illustrative, rates from New Orleans to Chicago are but 2.5 cents higher than to St. Louis, and on the class basis rates from St. Louis to St. Paul would be higher than the rates from Chicago to St. Paul by a considerably greater amount. Some readjustment will apparently be necessary in order that undue prejudice to St. Louis may not result.

The adoption of the standing rate committee's plan would still leave the rates from the Illinois points relatively lower than from the Indiana points. The first-class rate from St. Louis would be \$1.35. No points in Indiana, except a few near Chicago, have rates as low as this. St. Louis is about 170 miles farther from St. Paul and Minneapolis than the average points in the Chicago group, and would pay only 33.5 cents first class higher than Chicago. Indianapolis, but little farther distant, would pay 62 cents higher. A haul from Indiana involves two or more carriers, while from St. Louis and many points in Illinois one-line routes are available; but this does not appear to be a valid reason for the difference in the rates for the comparatively long distances involved in this case. The rates suggested by the standing rate committee from the Illinois points are as high as they may properly be, without resulting in undue prejudice to St. Louis and preference of Chicago and other points; and therefore in order to bring about a substantial equality as between Indiana points and Illinois points, some reductions from

the Indiana points are necessary. The fact that the rates from the Indiana points are only slightly less than the combinations of locals, and the fact that they exceed the rates proposed by the defendants from the Illinois points by the substantial amounts shown indicate the impropriety of the adjustment. The record is convincing that the rates on the first five classes and on the commodities in issue are and for the future will be unreasonable and unduly prejudicial to the extent that they exceed or may exceed the rates contemporaneously in effect on the same classes and commodities from the Illinois points and west-bank Mississippi River points in Iowa and Missouri for approximately equal distances; and that Indiana, like Illinois, should be divided into about five zones or groups. The details of this adjustment will be left in the first instance to defendants.

The record does not warrant the prescribing of the official classification in connection with rates from Illinois points or western classification in connection with rates from Indiana, as sought by complainants. Where differences exist which are of substantial detriment to Indiana shippers, they should be removed by exceptions to the classification, by making uniform the classification ratings or by the establishment of commodity rates. The carriers should continue the work of making uniform the ratings in the several classifications as rapidly as practicable, particularly so far as the higher classes are concerned.

The defendants will be expected to establish rates and exceptions to the official classification in conformity with the conclusions above stated, on or before July 1, 1922. The record will be held open for the entry of such orders as may be necessary if this be not done.

COMMISSIONERS HALL, AITCHISON, EASTMAN, and POTTER dissent.

COMMISSIONER LEWIS did not participate in the disposition of this case.

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No. 10949.

BALL BROTHERS GLASS MANUFACTURING COMPANY  
v.  
DIRECTOR GENERAL, AHNAPEE & WESTERN RAILWAY  
COMPANY, ET AL.

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*Submitted April 17, 1920. Decided February 23, 1922.*

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Rates on glass fruit jars, fruit-jar tops, and jelly glasses from Muncie, Ind., to points in Wisconsin and Minnesota found to be unduly prejudicial to Muncie and preferential of Hillsboro, Ill. Basis for the establishment of nonprejudicial rates prescribed for the future.

*Warner & Warner, Arthur W. Brady, and R. B. Coapstick* for complainant.

*D. P. Connell* for defendants.

*R. W. Ropiquet* and *A. J. Ronan* for intervener.

REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, MEYER, AITCHISON, AND LEWIS.  
*MEYER, Commissioner:*

This case was made the subject of a proposed report which was served upon the parties. Exceptions were filed by the complainant.

The complainant is a manufacturer of fruit jars, fruit-jar tops, and jelly glasses at Muncie, Ind. By complaint filed October 13, 1919, it is alleged that the rates on the articles mentioned, in carloads, from Muncie to numerous points in the states of Wisconsin and Minnesota are unreasonable and unduly prejudicial, to the preference and advantage of Hillsboro, Ill., at which point a competing manufacturer is located. The Commission is asked to prescribe reasonable and nonprejudicial rates for the future. Rates are stated herein in cents per 100 pounds and are those in effect prior to the general increases authorized by us on July 29, 1920. The same rates apply on each of the articles above mentioned, and only the fruit-jar rates will be referred to.

The Schramm Glass Manufacturing Company, engaged in the manufacture of fruit jars at Hillsboro, intervened at the hearing.

While unreasonableness is alleged, that allegation is not stressed, it being stated for the complainant that the real basis of the complaint is the alleged improper relationship between the rates from Muncie and from Hillsboro. Fruit jars, in carloads, are rated fifth



class, minimum 30,000 pounds, in official, southern, and western territories. The following table shows the present rates on fruit jars, the fifth-class rates, and the distances from Muncie and Hillsboro to representative points in Wisconsin and Minnesota:

To—	From Muncie.			From Hillsboro.			Excess, Muncie over Hillsboro.	
	Dis- tance.	Fruit- jar rate.	Fifth- class rate.	Dis- tance.	Fruit- jar rate.	Fifth- class rate.	Fruit- jar rate.	Fifth- class rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Milwaukee, Wis.....	266	22.5	22.5	315	23.5	23.5	<sup>1</sup> 1	<sup>1</sup> 1
Madison, Wis.....	310	34.5	34.5	305	23.5	23.5	11	11
La Crosse, Wis.....	444	37	37	438	23	26	14	11
Wausau, Wis.....	476	37	40.5	525	23	26.5	14	14
Eau Claire, Wis.....	493	37	40.5	488	23	26.5	14	14
Rhineland, Wis.....	517	37	40.5	566	29.5	32.5	7.5	8
Ashland, Wis.....	617	37	40.5	600	29.5	32.5	7.5	8
Winona, Minn.....	477	37	37	462	23	26	14	11
Albert Lea, Minn.....	564	37	40.5	458	23	26.5	14	14
St. Paul, Minn.....	579	37	40.5	543	23	26.5	14	14
Mankato, Minn.....	611	39	42.5	551	25.5	27.5	13.5	15
Duluth, Minn.....	649	37	40.5	626	29.5	32.5	7.5	8
Brainerd, Minn.....	717	55.5	59	700	41.5	45	14	14
Crookston, Minn.....	872	66	69.5	855	52	55.5	14	14

<sup>1</sup> Muncie rate less than Hillsboro.

The rates shown to Milwaukee and Madison from Hillsboro are the fifth-class rates based on the zone-A scale prescribed by us in *C. F. A. Class Scale Case*, 45 I. C. C., 254, made effective February 15, 1920, to those points as well as to a number of others in southern Wisconsin and northern Illinois, in lieu of the previous commodity rates, following the recommendation in *Illinois Classification*, 55 I. C. C., 290.

The complainant relies in large measure on a comparison of the rates from Muncie and Hillsboro. It will be noticed that while the distances from those points are not materially different, the Muncie distances being actually lower in a few instances, the fruit-jar rates from Muncie are greater than from Hillsboro in every case except to Milwaukee, the maximum excess being 14 cents. It was testified for complainant that in order to successfully compete with the manufacturer at Hillsboro it bases its delivered prices at points in Wisconsin and Michigan on the Hillsboro rates and absorbs the differences between those rates and the Muncie rates. The complainant showed that on 220 cars of fruit jars moving from Muncie to 28 points in Wisconsin during the year 1919, the average weight of which was 31,890 pounds, the ton-mile earnings ranged from 11.4 mills to 23 mills, and the car-mile earnings from 19.2 cents to 36.9 cents; and that if these same shipments had moved from Hillsboro, the ton-mile earnings would have ranged from 6.5 mills to 12.7 mills and the car-mile earnings from 13.3 cents to 20.9 cents. A similar

showing with reference to 319 cars of fruit jars to 25 Minnesota destinations in 1919 indicates an average car loading of 32,628 pounds, earnings from Muncie ranging from 12.1 mills to 15.7 mills per ton-mile, and from 18.6 cents to 25.6 cents per car-mile; and from Hillsboro, ranging from 8 mills to 12.4 mills per ton-mile, and from 13.1 cents to 20.5 cents per car-mile.

The complainant referred to our statement in *Illinois Classification*, *supra*, page 301, that:

\* \* \* the consensus of view doubtless is, and we believe this to be correct, that the territory in the two states [Illinois and Indiana] is essentially similar in character and that the Indiana-Illinois line does not divide diverse transportation conditions.

and also to the following statement on page 307 of the same report:

Fruit jars move on commodity rates applicable to glass bottles in the Illinois district. As stated above, it is proposed to cancel the commodity rates on glass bottles. As a result fruit jars would be changed to the basis of fifth class under the Disque scale governed by the official classification. The principal manufacturer in Indiana, located at Muncie, shows that the present rates in the Illinois district give undue preference to a competitor located at Hillsboro, Ill.

It is recommended that the discrimination between these points be removed.

It is the contention of the complainant that the fruit-jar rates from Muncie and Hillsboro should be placed upon the same basis, distance considered, and that apparently this should be accomplished by reductions of the Muncie rates and increases of the Hillsboro rates.

The defendants made no attempt to justify the present disparity between the rates on fruit jars from Muncie and Hillsboro to the points in question. They contend that the present rates from Muncie are not unreasonably high, but concede that the Hillsboro rates are unduly low and in need of revision upward.

The fruit-jar rates from Muncie to Minnesota and Wisconsin, except points in southern Wisconsin, are, generally speaking, based on the lowest combination on either Chicago, Milwaukee, or Hoopes-ton, Ill., of which the components up to the gateways are the fifth-class rates based on the zone-A scale prescribed in *C. F. A. Class Scale Case*, *supra*. The fruit-jar rates from Washington, Pa., the only other producing point in central territory, are made on the same basis.

Following our decisions in *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325, and *The Fifteen Per cent Case*, 45 I. C. C., 303, and the readjustment under the *C. F. A. Class Scale Case*, *supra*, the factors from Muncie to the gateways were increased, and this resulted in corresponding increases in the through rates from Muncie made upon the combination basis. Similar increases in connection with the rates from Hillsboro to the states mentioned were not authorized,

and therefore the increases in the rates from Muncie resulted in differences between the rates from Muncie and Hillsboro materially in excess of those which had theretofore existed.

There is a large fruit-jar movement in central territory to which, the full fifth-class rates generally apply. It also appears that fruit jars load only slightly in excess of the classification minimum of 30,000 pounds and in view of this fact the carriers assert that they might with propriety apply the fifth-class rates to fruit jars from Muncie to the territory in question. They therefore contend that to the extent the fruit-jar rates from Muncie are less than the fifth-class rates, the present rates are below what the carriers might reasonably charge for the service. The defendants also cited a number of heavy commodities, such as fence wire, forgings, and nails, upon which the fifth-class rates apply from central territory to Wisconsin and Minnesota, and show that both by reason of the higher rates and heavier loading, the earnings thereon would be materially greater than on fruit jars.

While, as above indicated, the carriers assert that the present commodity rates on fruit jars and even fifth-class rates from Hillsboro to Wisconsin and Minnesota are too low, they contend that some difference in the rates from those points is justified by the fact that they are located in different territories, the rates from which are made on different bases. Hillsboro is located in St. Louis, Mo., territory, and it is explained that lines operating from St. Louis to St. Paul and Duluth pass through Hillsboro and the rates from that point may not exceed the St. Louis rates. As a result of competition between the gateways, the usual basis from St. Louis to St. Paul is 105 per cent of the Chicago-St. Paul rates, and in making rates from St. Louis to points intermediate to St. Paul and Duluth, the rates to those points are observed as maxima, the rates to points beyond being based on the combinations using the fifth-class rates beyond St. Paul and Duluth. It is also stated that traffic from St. Louis to Wisconsin and Minnesota moves over lines with light grades and heavy traffic density, and does not necessarily pass through the expensive terminals at Chicago, as does traffic from Muncie to the same destinations; and further that the rates from St. Louis to St. Paul were influenced by water competition on the Mississippi River, although it is conceded that at the present time such competition is largely, if not entirely, potential only. There are no fruit-jar manufacturers located at St. Louis, but the defendants stated that the commodity rates on fruit jars are the same as on glass bottles which are manufactured at St. Louis, and which load considerably heavier than fruit jars.

The defendants compared the fruit-jar rates and the fifth-class rates from Hillsboro to Wisconsin and Minnesota with the fifth-class rates that would apply for similar distances based on the zone-A scale prescribed in *C. F. A. Class Scale Case, supra*, which, they state, are upon a much lower basis than usually applies west and northwest of Chicago. The fifth-class rates under such scale, generally speaking, would be somewhat higher than the fifth-class rates from Hillsboro, the excess being 2.5 cents in the case of St. Paul, and materially higher than the commodity rates. In this connection defendants call attention to the fact that the application of the fifth-class rates on fruit jars from Hillsboro to points in northern Illinois and southern Wisconsin, following the Commission's decision in *Illinois Classification, supra*, results in rates to Madison and Milwaukee of 23.5 cents, one-half cent higher than the commodity rate for the much longer haul to St. Paul. The defendants also compared the rates on fruit jars from Hillsboro to Wisconsin and Minnesota with the fifth-class rates applicable to fruit jars from Hillsboro to points in Missouri, Kansas, Nebraska, and Iowa for distances of from 335 miles to 589 miles, which rates range from 27.5 cents to 64 cents.

The interveners introduced no evidence but contend that the present differences between the rates from Muncie and Hillsboro are justified by the difference in circumstances and conditions affecting the making of rates from those points, respectively, and from the territories in which they are located.

From a consideration of the whole record, we are of opinion and find that the rates on glass fruit jars from Muncie, Ind., to points in Wisconsin and Minnesota, set forth in the complaint, are and for the future will be unduly prejudicial to Muncie and unduly preferential of Hillsboro.

The rates from both Hillsboro and Muncie are grouped to a considerable extent, and while the disadvantage to complainant is in some instances 7.5 cents or even less, in others it is 14 cents and in a few instances even greater, and this is regardless of whether the difference in distance is in favor of Muncie or Hillsboro. To some points in Minnesota south of St. Paul, the difference in distance in favor of Hillsboro is somewhat greater than to points in Wisconsin or to St. Paul. Taking all points into consideration the average distances from the two points are not widely different.

In *Indiana Public Service Commission v. A., T. & S. F. Ry. Co.*, 66 I. C. C., 512, we found class rates, as well as rates on glass fruit jars from points in Indiana, including Muncie to St. Paul, unreasonable and unduly prejudicial to the extent that they exceed or may exceed rates contemporaneously in effect from Illinois points, including Hillsboro, for approximately equal distances. Compliance

with our findings in that case will remove the undue prejudice with respect to St. Paul. Rates to other points of destination in this complaint are made with some relation to the rates to St. Paul. The defendants will be expected to readjust the rates on glass fruit jars from Muncie and Hillsboro to points other than St. Paul in line with and under the principles announced with respect to rates to that point in the case referred to on or before July 1, 1922.

The record will be held open for the entry of such order as may be necessary if the rates are not properly readjusted within the time specified.

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No. 11287.<sup>1</sup>

TRAFFIC BUREAU OF NASHVILLE ET AL.  
*v.*  
DIRECTOR GENERAL, AS AGENT, LOUISVILLE & NASHVILLE RAILROAD COMPANY, ET AL.

*Submitted July 8, 1921. Decided February 18, 1922.*

1. Rates on coal, in carloads, from Tennessee mines served by the Tennessee Central to Nashville, Tenn., in effect from June 25, 1918, to October 28, 1919, inclusive, and from western Kentucky mines served by the Louisville & Nashville in effect from June 25, 1918, to November 6, 1919, inclusive, found unreasonable to the extent that they exceeded the subsequently established rate of \$1.20 per net ton. Reparation awarded.
2. Rates on coal, in carloads, from western Kentucky mines served by the Louisville & Nashville to Clarksville in effect from June 25, 1918, to October 9, 1919, inclusive, found unreasonable to the extent that they exceeded a rate of \$1.20 per net ton.

*T. M. Henderson and Perkins Baxter* for complainants.

*Alex. M. Bull, Edward D. Mohr, and D. Lynch Younger* for Director General.

*Edward D. Mohr* for Louisville & Nashville Railroad Company.

*D. Lynch Younger*, for Tennessee Central Railroad Company.

*Perkins Baxter* for Davidson county, Tenn., intervener.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, EASTMAN, AND POTTER.  
*MEYER, Commissioner:*

The issues here presented were made the subject of a proposed report by the examiner. Exceptions were filed by complainants, and the parties were heard in oral argument. Upon consideration of the record we have reached conclusions differing in part from those suggested by the examiner.

The Traffic Bureau of Nashville, a voluntary association of individuals, firms, and corporations, doing business in Nashville, Tenn.,

<sup>1</sup> This report also embraces No. 11523, City of Clarksville, Tenn., et al. *v.* Director General, as Agent, Louisville & Nashville Railroad Company, et al.; No. 11562, Walter Cain, Special Auditor of the State of Tennessee, *v.* Director General, as Agent, Louisville & Nashville Railroad Company, et al.; and No. 11562 (Sub-No. 1), Railroad and Public Utilities Commission of the State of Tennessee *v.* Director General, as Agent.

brings its complaint in behalf of named receivers of coal, at that place, including the city of Nashville. Complaint is also brought by Walter Cain, special auditor in behalf of the state of Tennessee; the Railroad and Public Utilities Commission of Tennessee in behalf of the Mecklenburg Real Estate Company, a Tennessee corporation having its principal place of business in Nashville; and the city of Clarksville, Tenn., in its own behalf and in behalf of named purchasers of coal at Clarksville. At the hearing, the county of Davidson, Tenn., intervened as complainant in Docket No. 11562. These complaints were consolidated at the hearing, and will be disposed of in one report. Nashville is in Davidson county, and the Nashville rate applies to points in that county. Rates are stated in amounts per net ton, and apply on coal, in carloads.

These complaints seasonably filed bring in question the rate of \$1.30 to Nashville from Tennessee mines served by the Tennessee Central Railroad, in effect from June 25, 1918, to October 28, 1919, inclusive, and the \$1.20 rate in effect between the same points from October 29, 1919, to the end of federal control. They also attack the \$1.30 rate from Louisville & Nashville western Kentucky mines to Nashville, in effect from June 25, 1918, to November 6, 1919, inclusive, and the \$1.20 rate in effect between the same points from November 7, 1919, to August 25, 1920, inclusive. These rates are alleged to have been unreasonable, unduly prejudicial to Nashville, and violative of section 10 of the federal control act and of general order No. 28 of the Director General of Railroads. Some of the complaints allege that the rate that should have been in effect to Nashville from these points of origin during the entire period from June 25, 1918, was \$1.15; all of them ask reparation. Complainants do not attack the increases under *Increased Rates*, 1920, 58 I. C. C., 220, but ask us to fix reasonable rates for the future. Complainants' main contention is that erroneous application of general order No. 28 produced rates relatively and *per se* unreasonable, and unduly prejudicial to Nashville.

Rates to Nashville from the Louisville & Nashville western Kentucky mines were before us in *Traffic Bureau of Nashville, Tenn. v. L. & N. R. R. Co.*, 28 I. C. C., 533; 43 I. C. C., 366; and 53 I. C. C., 37. As a result of the findings therein, and the increases permitted in *The Fifteen Per Cent Case*, 45 I. C. C., 303, certain differences existed June 24, 1918, in the rates on coal from various points of origin to Nashville. These differences were not differentials, but reflected, as modified by voluntary actions of the carriers, commercial and carrier competition at Nashville. The rates to Nashville in effect June 24, 1918, were 90 cents from the Louisville & Nashville western Kentucky mines and Tennessee mines served by the Ten-

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nessee Central Railroad. From Illinois Central western Kentucky mines and Alabama and Tennessee mines on the Nashville, Chattanooga & St. Louis Railroad the rates were \$1. Effective June 25, 1918, these rates were all increased 40 cents, making rates from Illinois Central and Nashville, Chattanooga & St. Louis mines \$1.40, and from Louisville & Nashville and Tennessee Central mines \$1.30.

The rates were increased equally to preserve then existing differences in rates from mines served by the different carriers which though not strictly differentials were treated as such in view of the long adjustment they had undergone. The only rates here involved are those from Louisville & Nashville and Tennessee Central mines.

Certain of these complainants protested to the Railroad Administration when the \$1.30 level of rates from Louisville & Nashville and Tennessee Central mines was announced, arguing the same interpretations of general order No. 28 now advanced, and urged their protests after the effective date of general order No. 28 until the rates were reduced to \$1.20, the level then asked, effective from Tennessee Central mines October 28, 1919, and from Louisville & Nashville mines November 7, 1919. When these reductions were made the Railroad Administration did not concede that the \$1.30 rates had been unreasonable, and refused to consider reparation.

In the first *Traffic Bureau of Nashville Case, supra*, we found the average distance from Louisville & Nashville western Kentucky mines to Nashville to be about 110 miles. The construction of the Radnor yards outside of Nashville through which all coal from western Kentucky hauled by the Louisville & Nashville Railroad to Nashville is handled has since increased the average haul from these mines to about 122 miles. In that case we had before us rates from Illinois Central and Louisville & Nashville western Kentucky mines, and from Tennessee and Alabama mines via the Nashville, Chattanooga & St. Louis. Rates from all these mines to Nashville were \$1 per ton. The \$1 Illinois Central rate was permitted to stand; a rate of 90 cents was prescribed from the Nashville, Chattanooga & St. Louis mines; and 80 cents was found reasonable from Louisville & Nashville western Kentucky mines.

In the last proceeding involving rates from western Kentucky mines served by the Louisville & Nashville Railroad to Nashville, 53 I. C. C., 37, we said:

On July 20, 1917, we issued a general order in which we permitted the defendant to make effective on or before August 4, 1917, and subject to the terms of our Sixth Section Order No. 42910 of July 2, 1917, a rate from western Kentucky mines on its lines to Nashville not in excess of 15 cents per ton over the rate prescribed by us in *Traffic Bureau of Nashville, supra*. On August 4, 1917, the defendant republished the 90-cent rate.



A 95-cent rate from Louisville & Nashville western Kentucky mines to Nashville was authorized, but that carrier published a 90-cent rate. General order No. 28 authorized the carriers to put into effect advances theretofore authorized by us before increasing the rates under that order where the rates had not been increased 15 cents per ton since June 1, 1917.

Prior to federal control, rates from Tennessee mines served by the Tennessee Central were under the jurisdiction of state authorities. From October 15, 1916, to December 21, 1917, rates from those mines to Nashville were 80 cents. Effective December 22, 1917, they were increased to 90 cents, by permission of the Railroad Commission of Tennessee.

The rates approved by us were at one time \$1 from Illinois Central mines, 90 cents from Nashville, Chattanooga & St. Louis mines, and 80 cents from Louisville & Nashville mines. As a result of *The Fifteen Per Cent Case*, *supra*, and of the permission of the Tennessee Railroad Commission, increases were authorized in all of these rates. The rates in effect June 24, 1918, were as heretofore stated; under the provisions of general order No. 28 all these rates were to be increased 5 cents to make up the 15 cents where permitted in *The Fifteen Per Cent Case*. All of them were then increased 30 cents, the amount applicable to the highest rated group, and the usual disposition of fractions was made, the rates becoming \$1.40 from Illinois Central and Nashville, Chattanooga & St. Louis mines, and \$1.30 from Louisville & Nashville and Tennessee Central mines.

As tending to show the unreasonableness of the \$1.30 rates in issue, complainants introduce evidence to show that, while the average loading of coal cars moving from Louisville & Nashville western Kentucky mines to Nashville was formerly 41 tons, it is now about 44 tons.

They also introduced several rate comparisons to show the unreasonableness of the rates attacked. The following table is prepared from complainants' exhibits:

From western Kentucky mines to—	Number of lines.	Average haul in miles.	Rate in effect June 25, 1918, to Nov. 7, 1919.	Present rate.
<b>Louisville and Nashville Railroad:</b>				
Nashville, Tenn.....	1	110	\$1.30	\$1.20
Louisville, Ky.....	8	142	1.00	1.00
Kosmosdale, Ky.....	2	160	1.10	1.10
East St. Louis, Ill.....	1	228.5	1.30	1.30
<b>Illinois Central Railroad:</b>				
Louisville, Ky.....	1	125	1.00	1.00
Kosmosdale, Ky.....	1	107	1.00	1.00
East St. Louis, Ill.....	1	278	1.30	1.30

The Nashville rate is further compared with lower rates for greater distances from southern Illinois groups to East St. Louis, and with such rates from Kentucky and Tennessee mines on various lines to Chattanooga and Knoxville, Tenn., and Cincinnati, Ohio.

Defendants contend that these rate comparisons are defective because of dissimilarity of service, and water competition at Louisville. The latter contention has been disposed of by us in our former decision in the *Traffic Bureau of Nashville Cases*, *supra*.

Complainants also introduced exhibits purporting to show a comparison of the average revenue on coal during the year 1918 with the average revenue on all traffic during that year, and comparisons of the average car-mile revenue and rate per ton-mile on coal in 1918, with similar figures for that year on all other traffic. Defendants question the reliability of these exhibits on account of alleged errors in principles and basic figures used. There is no proof of undue prejudice or disadvantage.

Defendants introduced evidence to show that the rates in issue were not in excess of rates for similar hauls in southern territory to points where rates prior to federal control were not affected by the competition of near-by mines or by water transportation; that these rates bore a reasonable relation to rates from other mines serving Nashville; and were neither unreasonable, unduly prejudicial to Nashville, nor otherwise in violation of law.

Certain complainants, to prove their damage by reason of the alleged unreasonableness of the rates complained of, testified that they had made contracts for the future delivery of coal on the basis of the 90-cent rates.

Rates on coal, in carloads, from Louisville & Nashville western Kentucky mines were higher to Clarksville than to Nashville from November 7, 1919, to October 9, 1920, inclusive, and defendants admit that such rates were to that extent unreasonable.

Upon consideration of the record we find that the rates on coal, in carloads, to Nashville from Tennessee mines served by the Tennessee Central Railroad in effect from June 25, 1918, to October 28, 1919, inclusive, and from western Kentucky mines served by the Louisville & Nashville Railroad in effect from June 25, 1918, to November 6, 1919, inclusive, were unreasonable to the extent that they exceeded the subsequently established \$1.20 rate. We further find that complainants and interveners made the shipments as described and to the extent that they paid and bore the charges thereon were damaged in the amount of the difference between the charges paid and those which would have accrued on the basis herein found reasonable and are entitled to reparation, with interest. Complainants and interveners should file a statement of shipments in accordance

with rule V of the Rules of Practice, and submit it to the defendants for verification.

We further find that the rates on coal, in carloads, from western Kentucky mines served by the Louisville & Nashville Railroad to Clarksville in effect from June 25, 1918, to October 9, 1920, inclusive, were unreasonable to the extent they exceeded rates herein found reasonable from western Kentucky mines to Nashville. No order for the future is deemed necessary. The proceeding in Docket No. 11523 will be held open for proof of damage.

COMMISSIONER DANIELS dissents.

66 I. C. C.

No. 12477.

MASSACHUSETTS OIL REFINING COMPANY

v.

BOSTON &amp; ALBANY RAILROAD COMPANY ET AL.

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*Submitted January 24, 1922. Decided February 18, 1922.*

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Fore River Railroad Corporation found to be a common carrier. Rates on petroleum and petroleum products, and fuel oil, in carloads, from complainant's refinery to destinations in the New England states, found unreasonable and unduly prejudicial and reasonable joint rates prescribed. Reparation awarded.

*Clark & LaRoe* and *Wilbur LaRoe, jr.*, for complainant and International Paper Company, intervener.

*W. L. Barnett, F. A. Farnham,* and *W. W. Meyer* for New York, New Haven & Hartford Railroad Company, Central New England Railway Company, and Wood River Branch Railroad.

*Cravath, Henderson, Leffingwell & deGersdorff* and *Thomas W. Bowers* for Fore River Railroad Corporation.

*C. H. Tiffany* for New England Paper & Pulp Traffic Association and New England Fuel Oil Consumers' Committee, interveners.

## REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

*MEYER, Commissioner:*

The issues in this proceeding were made the subject of a proposed report, exceptions were filed by complainant, and oral argument was had.

Complainant, a corporation, by complaint filed March 2, 1921, alleges that the combination rates charged on carload shipments of fuel oil, petroleum, and petroleum products from its refinery located near East Braintree, Mass., to destinations in the New England and other states were and are unjust and unreasonable, in violation of sections 1 and 15, and unduly prejudicial to complainant and preferential of its competitors located at other New England points, in violation of section 3 of the act. We are asked to prescribe reasonable joint through rates and to award reparation on shipments made since September 15, 1920. The New England Paper & Pulp Traffic Association, the New England Fuel Oil Consumers' Committee, and the International Paper Company intervened.

Complainant's refinery is located on navigable water and on the line of the Fore River Railroad Corporation about 1.5 miles from its junction with the New Haven at East Braintree. The company was organized in December, 1919; the first shipment of oil from the refinery was made on December 15, 1920, and a total of 1,409 cars was shipped prior to June 1, 1921. Its crude oil is received by vessel. It sells and distributes gasoline, kerosene, and practically all products and by-products of crude petroleum. Its area of distribution is mainly eastern Massachusetts, Rhode Island, and eastern Connecticut, but some shipments have been made to each of the New England states and to some states without that territory. It is in keen and active competition with refineries and oil-storage terminals in the vicinity of Boston, at Providence, R. I., and at other New England cities. Competition is also met from Bayonne, N. J., and other points without New England.

In conformity with freight rate authorities of the Railroad Administration, dated January 22, 1919, and October 4, 1919, oil rates on the New England railroads were placed on a mileage basis. Two scales, which did not differ for one or more-than-one line hauls, were published on petroleum and petroleum products as described in the official classification, in carloads, minima and estimated weight, per gallon, as stated therein, the one scale applicable to zone-A territory and the other to zone-B territory as these zones are defined in *Proposed Increases in New England*, 49 I. C. C., 421. Other distance scales were published on fuel oil, in tank-car loads, in which no differentiation was made according to origin or destination territory, but the scales differed for one, two, or three line hauls, observing, however, the charges on petroleum and petroleum products as maxima. This so-called standard basis of rates as increased on August 26, 1920, applies generally throughout New England and practically all railroads therein admitted to be common carriers are parties to tariffs containing such rates. The standard basis is applicable from East Braintree. In addition thereto complainant has paid and now pays the rate of 2.5 cents per 100 pounds of the Fore River.

Complainant does not in this proceeding attack the reasonableness of the standard basis of rates. It and the interveners are, however, not satisfied with the existing level of oil rates throughout New England and emphasize that no action should be taken in this case which might be construed to place the stamp of approval upon the existing general adjustment in such manner as to preclude a later attack upon it by them. Neither does complainant attack the charges and revenues of the Fore River separately considered. It contends, however, that the failure of defendants to establish joint rates from

its plant upon the contemporaneous standard basis in effect from competitive refineries results not only in the payment of unduly prejudicial but unreasonable rates and charges. It asks that the standard basis of rates be prescribed from its plant, mileage to be computed by adding 2 miles to the distance from East Braintree. It further asks that rates on fuel oil to destinations on the New Haven be established on the one-line-haul basis.

The Fore River is named as a defendant, but is willing to participate in joint rates upon the basis asked. The New Haven asserts that the Fore River is not a common carrier and its status must be determined at the outset. Replies to a questionnaire addressed to the Fore River were made a part of the record without objection by the parties.

The Fore River is a standard-gauge road having 2.37 miles of main line and 7.55 miles of sidetrack. Its main track extends from the junction with the New Haven at East Braintree to the Fore River plant of the Bethlehem Shipbuilding Corporation at Quincy, Mass. An extension of its main line runs through the shipbuilding plant to a point on Washington street in Quincy.

The railroad was originally built by the Fore River Ship & Engine Company in 1902, and was known as the Fore River Railroad. It was sold successively to the Fore River Shipbuilding Company and the Fore River Shipbuilding Corporation. On March 28, 1917, an agreement was entered into between the commonwealth of Massachusetts, acting by its Commission on Waterways and Public Lands and the Fore River Shipbuilding Corporation, which, among other things, provided that the latter would cause the railroad to be incorporated as a common carrier. On January 6, 1919, the Fore River Railroad Corporation was incorporated under the general laws of Massachusetts. By special act of the legislature the Fore River Shipbuilding Corporation or its successors were empowered to sell the line between its plant and the New Haven. The railroad corporation acquired the equipment, rails, and a large portion of the right of way by purchase and the remainder of the right of way, particularly within the plant, by lease. The Public Service Commission of Massachusetts issued a certificate of public convenience and necessity and further certified that the corporation had complied with all state laws preliminary to operation as a railroad. Stock in the amount of \$147,000 was issued which, with the exception of qualifying shares of directors, is now owned by the Bethlehem Steel Corporation, which also controls the Bethlehem Shipbuilding Corporation, which operates the shipbuilding plant. There is no bonded indebtedness.

The Fore River owns three locomotives, but no freight cars. Its car supply, except complainant's cars, is obtained from the New Haven. It does not carry passengers or mail. It has no freight stations on its line. It is not a member of the American Railway Association. It does not issue bills of lading and does not pay per diem. Claims for loss and damage are presented to the New Haven unless it is evident that the damage occurred on the line of the Fore River.

The Fore River concurs in the official classification and files its interchange switching and demurrage tariffs with this Commission. It collects demurrage from complainant on the average-agreement plan. It performs plant switching for the affiliated industry and for complainant at a charge of \$13 per hour, said to be covered by tariff publication, which is not, however, on file with this Commission. It concurred in a joint class tariff published by the New Haven effective June 10, 1908. Its first tariff was filed with the Commission effective August 1, 1909. When called upon in 1907 to file reports of accidents and in 1910 to file a tariff index, it demurred to being classed as an interstate carrier subject to the regulations of this Commission, and it appears somewhat reluctantly acquiesced after it was pointed out that it was participating in interstate transportation. It files annual reports in the form prescribed by us.

The Fore River asserts that it holds itself out to transport carload and less-than-carload freight for all indiscriminately. It is stated that its files indicate that it served independent shippers from the time of its construction. In addition to the shipbuilding corporation, it regularly serves complainant and the Eastern Massachusetts Street Railway Company, neither of which is affiliated with the railroad or the shipbuilding corporation. A list of 15 other independent shippers which have utilized or are utilizing the facilities of the Fore River was furnished by complainant. A large number of these shippers were engaged in construction or other work performed under contract for the shipbuilding corporation and their shipments were received within the plant area. Shipments made by others were not for use in connection with any activity of the shipbuilding plant. The shipbuilding plant is enclosed by a fence, but this is said not to affect the public use of tracks within or to have been an obstacle to their use by independent shippers. Shipments for the Eastern Massachusetts Street Railway Company, mainly coal, are transported from East Braintree through the shipbuilding plant to a side-track connecting with the street railway on Washington street in Quincy. The railroad further maintains a public team track outside the plant fence at a point near where the railroad passes through the plant gate and shipments have been received and delivered on this

track. The railroad has no cars for handling less-than-carload shipments other than cars of complainant, and the manner in which such shipments are handled is not clear.

The investment value of road and equipment, based upon original cost less accrued depreciation and not including real estate leased for right of way, is stated by the corporation as \$232,767.16 on December 31, 1920. The railway operating revenue for that year is shown to be \$120,915, and its net railway operating income \$13,201.28. An analysis of traffic and revenues for the last calendar year, made in reply to an inquiry in the questionnaire, is somewhat at variance as regards freight revenue with the operating revenues shown above, but gives some indication of the various kinds of services rendered. As disclosed by carrier's answer, 5,636 loaded cars yielding a revenue of \$58,602.42 were handled in interchange switching between the connecting carrier and the plant of the affiliated industry, and 1,387 cars yielding a revenue of \$16,834.33 were interchanged for independent industries and the public. Revenues of \$57,580.25 were derived from interior switching at the plants of the affiliated industry and \$2,899 from interior switching at independent plants. Sixty-one cars were moved in local switching service between plants of the controlling interests and other industries. During the period from January 1, 1920, to April 30, 1921, the total number of engine-hours devoted to railroad service was 6,310 as compared with 4,793 hours spent in plant service.

The agreement, in pursuance of which the Fore River was incorporated as a common carrier, was made to further the plans of the public authorities of Massachusetts for the development of additional harbor and railroad facilities to serve the people of that state, particularly of the southeastern portion. A tract of land known as Haywood's Creek was taken under the right of eminent domain by state authorities. A portion of this land was leased to the Fore River Shipbuilding Corporation, and another portion was sold to complainant, and still another portion was retained by the Commission on Waterways and Public Lands. The Commissioner of Public Works of the commonwealth of Massachusetts testified that in the development of this project \$160,000 had already been spent in creating channels and preparing for the construction of a pier to be built in the near future. The Fore River alone reaches this property, and but for the assurance that the railroad would be made available for public service it is testified that the authorities would not have approved taking the property. By this contract the Fore River Shipbuilding Corporation agreed to make at its own expense or to permit the Commission on Waterways and Public Lands to make such connections between railroad and points



upon the land taken as the commission might designate, and, further, to cooperate with the commission in establishing wharves, piers, and docks for the public use on that part of the land not included in the industrial locations.

Complainant emphasizes the simple service performed in connection with its shipments. When cars of oil are loaded at the plant the Fore River whenever requested hauls the cars from the plant to the interchange track at East Braintree, a distance of approximately 1.5 miles. The shipments are moved on shipping memoranda and the bills of lading are issued by the New Haven. The haul is not through a congested district and the interchange at East Braintree is said to be of the simplest sort.

When the refinery was in process of construction the question of extending the East Braintree rates to complainant's plant was the subject of negotiations between complainant, the New Haven, and the Fore River interests. In October, 1920, the New Haven submitted the alternative of two propositions. Its first suggestion was that the Fore River discontinue the operation of its main line and that the New Haven perform the service between the interchange and designated tracks to be agreed upon, the Fore River to bear the expense of maintaining the tracks. As an alternative it offered to grant as an allowance to the Fore River a sum equivalent to the amount which it would cost the New Haven to perform the service. Under the second suggestion complainant would have paid the East Braintree rate as a transportation charge but would have been obliged to make arrangements with the Fore River for the use of its tracks. The Bethlehem Shipbuilding Corporation declined the offers. Complainant contends that these offers constitute an admission that the complainant is entitled to even more than the relief here asked and that the failure of the two railroads to reach an agreement is merely a failure to agree in the matter of divisions. This contention overlooks the fact that the New Haven did not offer to grant out of the applicable rates any sum for maintenance of the tracks of the Fore River or any return upon the investment of property devoted to the public use.

Complainant's competitors are located at numerous points along the New England coast. The only instances cited by defendants in which complainant's competitors incur a transportation expense above the standard basis of rates are the Beacon Oil Company at Everett, Mass., and the Standard Oil Company at East Providence, R. I. In the latter case the shipper transports the traffic from the refinery to the connection with the New Haven. The nature of the service or the expense at Everett is not disclosed. Complainant points out that at Providence the New Haven computes the mileage

from Providence proper, although the haul from the various refineries or oil depots located within the switching district is through a congested district and ranges from 2 to 8 miles more than the Providence distance. It further points out that at Portland, Me., no switching charge is collected on shipments originating on the Portland Terminal Company and forwarded in connection with the Maine Central or Boston & Maine railroads. The additional distance which its competitors can ship petroleum and petroleum products at rates equal to those paid by complainant ranges from 15 to 120 miles. The addition of the 2.5-cent arbitrary amounts to approximately \$15 a car, and it is asserted that it is necessary to absorb this amount in order to secure the business. It further testified that its sales are only a small part of the total annual consumption of petroleum products in New England, due, in part, to the rate adjustment. As illustrative it estimates that it sells but 1.25 per cent of the fuel oil and 4.5 per cent of the kerosene.

Defendants other than the Fore River contend that in the event the Fore River is found to be a common carrier no public demand or necessity for joint rates has been shown as complainant alone is asking their establishment; that the Fore River performs a distinct and valuable service for complainant; that as this service is in addition to the service from East Braintree and no attack is made on the rates charged for either service separately considered no basis whatever exists for a finding of unreasonableness, and that the disadvantage of complainant is one of location in that it is not situated upon a trunk line.

The demands of the public authorities of Massachusetts that the Fore River be accorded the rights and privileges of a common carrier is a sufficient showing of necessity and desirability in the public interest. In so far as rates on petroleum and petroleum products are concerned the Railroad Administration has established and the carriers have maintained a uniform distance basis applying over a wide territory and accorded to substantially all of complainant's competitors. Under this uniform basis the New Haven not only divides the rates with the participating carriers but performs a terminal service at some points of origin which exceeds the joint service of the New Haven and the Fore River at East Braintree. It is difficult to conceive upon what ground the carriers could have refused the establishment of the rates asked on these commodities if the Fore River had been conceded to be a common carrier, and apparently the dispute as to its status alone prevented their establishment. The offer of the New Haven to shrink its revenue by granting a plant-facility allowance to the Fore River is further

evidence of the unreasonableness of failing to accord complainant the standard basis of rates on petroleum and petroleum products.

In so far as fuel oil is concerned a different situation is presented. As the rates differ for one, two, or three line hauls, shippers of fuel oil located on the New Haven have a corresponding advantage over complainant in shipping this commodity to destinations on that line. Complainant insists that rates on fuel oil from its plant to destinations on the New Haven should be made upon the single-line basis now applicable on fuel oil from Providence and other shipping points on the New Haven, recognizing the service of the Fore River by the addition of 2 miles to the East Braintree distance. On behalf of the New Haven it is stated that joint rates with connecting lines on fuel oil are applied on the two-line or three-line basis, irrespective of the length of the connecting lines. As illustrative, the rates to destinations on the Moshassuck Valley, a railroad only 2 miles long, are on the two-line basis. So far as the record shows, however, there are no refineries located on short lines from which the two-line basis applies to points on the New Haven. No instance is shown where the New Haven and a connecting line apply the one-line fuel-oil rates. At Portland, Me., shippers of fuel oil pay no switching charge, but the New Haven does not connect with the Portland Terminal Company upon which they are located. The two-line fuel-oil rates exceed the combination charged complainant by 0.5 cent in most instances, and in some instances the two-line fuel-oil rates are in excess of the contemporaneous rates applicable on petroleum and petroleum products. Charges on petroleum products are assessed on an estimated weight of 6.6 pounds per gallon and those on fuel oil at 7.4 pounds per gallon. At the same rate in cents per 100 pounds on an equal gallonage of fuel oil and petroleum products the freight charges are greater on fuel oil, the lower-grade commodity, and the car-mile earnings correspondingly higher. The tariffs publishing the rates on fuel oil from shipping points on the New Haven contain the following provision:

If the rates included herein, applying on petroleum products, based on estimated weight of 6-6/10 pounds per gallon, make a lower charge than the rates included herein applying on fuel oil, in tank cars, at an estimated weight of 7-4/10 pounds per gallon, the rates applying on petroleum products will be applied.

In the event that it is not accorded the one-line fuel-oil rates from its plant to destinations on the line of the New Haven, complainant urges that such an alternative provision should be provided in connection with the combination rates from its plant. To this the New Haven objects unless the establishment of joint rates on fuel oil on the same basis as the rates now in effect from other points is required.

We are of the opinion and find that the Fore River Railroad Corporation was and is a common carrier; that from September 15, 1920, the interstate rates on petroleum and petroleum products, in carloads, from complainant's plant near East Braintree, Mass., to destinations on the lines of defendants in the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, were, are, and for the future will be unjust, unreasonable, and unduly prejudicial to complainant and preferential of its competitors located within the Providence, R. I., switching district and at other shipping points on the line of the New York, New Haven & Hartford Railroad, to the extent that they exceeded, exceed, or may exceed the standard distance basis of rates contemporaneously applicable from such points to said points of destination, the distance from complainant's plant to be computed by the addition of 2 miles to the East Braintree distance; and that the charges applied on interstate shipments of fuel oil from complainant's said plant to said points on defendants' lines were, are, and for the future will be unreasonable to the extent that rates are so made that the charges on fuel oil in tank cars at an estimated weight of 7.4 pounds per gallon exceed charges at the rates found reasonable herein between the same points on petroleum products based on an estimated weight of 6.6 pounds per gallon. Defendants will be required to provide joint through rates on the basis herein found reasonable.

We further find that complainant made interstate shipments of petroleum and petroleum products and fuel oil under the rates herein found unreasonable, and paid and bore the freight charges thereon, and was damaged to the extent that the charges paid exceeded those that would have accrued under the rates herein found reasonable and that complainant is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

We are not asked in this proceeding to fix the divisions of the rates herein prescribed. Nothing herein should be taken as approving a division to the Fore River Railroad of an amount equal to its present local charge.

An appropriate order will be entered.

66 I. C. C.

No. 12059.

BEAUMONT CHAMBER OF COMMERCE

v.

ALEXANDRIA & WESTERN RAILWAY COMPANY ET AL.

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*Submitted October 31, 1921. Decided February 25, 1922.*

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The relief here sought was afforded under *Iron and Steel Articles from Galveston and Houston*, 61 I. C. C., 270. Complaint dismissed.

*Chas. A. Bland* for complainant and Port Arthur Chamber of Commerce and Shipping, intervener.

*F. H. Moore, H. M. Garwood, and G. H. Muckley* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant alleges that the rates on iron and steel articles from Beaumont, Tex., to certain destinations in Louisiana are unreasonable, unjustly discriminatory, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. We are asked to prescribe for the future rates no higher than the scale of distance rates prescribed for application from Galveston and Houston, Tex., to those destinations in *Galveston Commercial Asso. v. Director General*, 57 I. C. C., 390, plus the general increase of 1920, subsequently authorized. The Port Arthur (Texas) Chamber of Commerce and Shipping intervened. It alleges "that Beaumont and Port Arthur are substantially on a rate parity, that no lower scale of rates should be put in effect through this proceeding from Beaumont to Louisiana points than will also apply from Port Arthur," but asks no affirmative relief and offered no evidence.

The complaint, filed prior to our decision in *Iron and Steel Articles from Galveston and Houston*, 61 I. C. C., 270, seeks only the rates that were continued in effect as a result of the suspension order in that proceeding, and at the hearing complainant stated that this relief would be afforded by cancellation of the suspended schedules. Those schedules have since been canceled and there is no issue before us. The complaint will be dismissed.

66 I. C. C.

No. 12006.

KEOKUK & HAMILTON BRIDGE COMPANY  
v.  
WABASH RAILWAY COMPANY ET AL.

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*Submitted November 30, 1921. Decided March 2, 1922.*

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Complaint asking us to prescribe reasonable compensation for the use by defendants of complainant's bridge across the Mississippi River, and to require the movement of defendants' traffic via that bridge, dismissed for want of jurisdiction.

*James W. Carmalt* for complainant.

*L. H. Strasser, O. P. Westervelt and J. M. Elliott* for defendants.

*J. H. Henderson* for Keokuk Chamber of Commerce, intervener.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

*Esch, Commissioner:*

Exceptions were filed by complainant to the report proposed by the examiner, and the case has been orally argued before us.

The Keokuk & Hamilton Bridge Company, hereinafter called the bridge company, alleges in its complaint that the amounts paid it by defendants for the use of its bridge across the Mississippi River between Keokuk, Iowa, and Hamilton, Ill., do not provide a reasonable compensation therefor, and are less than the arbitraries shown in defendants' division sheets as set aside for that service; that they are less than carriers pay other bridges for similar service; and that to compel the bridge company to accept the amounts referred to, defendants have diverted traffic to and from Keokuk to routes via other bridges, which acts are unduly preferential of the companies operating those bridges and unduly prejudicial to the bridge company, in violation of paragraph 4 of section 1 and section 3 of the interstate commerce act. We are asked to prescribe for the future such divisions of the transportation charges on passengers and property between Keokuk and interstate points as will provide reasonable compensation for the use of the facilities afforded by the bridge company, and to require defendants to move the traffic in its natural and economical channel over complainant's bridge to and from Keokuk.

The Keokuk Chamber of Commerce intervened in the interest of the city of Keokuk in the maintenance and use of the bridge.

By authority of section 7 of "an act to authorize the construction of certain bridges and to establish them as post roads," approved July 15, 1866, the Hancock County Bridge Company, a corporation of the state of Illinois, and the Keokuk & Hamilton Mississippi Bridge Company, a corporation of the state of Iowa, were consolidated August 1, 1868, under the name of the bridge company. On January 19, 1869, the bridge company entered into a contract with defendants' predecessors, the Toledo, Peoria & Warsaw, the Des Moines Valley, the Columbus, Chicago & Indianapolis Central, and the Toledo, Wabash & Western railroad companies, under which the bridge company was to construct a bridge across the Mississippi River, to lay a track upon the bridge and connect it with the railroads, to keep the bridge and tracks in repair, etc., and the railroads were to pay certain amounts to the bridge company on freight and passenger traffic carried over the bridge. After the contract was entered into, the bridge company issued \$1,000,000 of construction bonds and \$1,000,000 of stock, which were turned over by the bridge company to the contractors, Andrew Carnegie and associates, in payment for the completed bridge. Construction began in 1869 and the bridge commenced operation in 1871. It is used by defendants, the Wabash and the Toledo, Peoria & Western, whose rails reach Hamilton, in serving the city of Keokuk. No railroad company has any interest in its ownership.

The bridge is 0.6 mile in length. Originally it was built purely for railroad purposes. In 1903 the bridge company entered into a contract with the Keokuk Electric Railway & Power Company, under which the latter operates its electric cars over the railroad tracks of the bridge between Keokuk and Hamilton. In 1914 an effort was made by the people of Keokuk to have another bridge constructed. Rather than have to meet this competition, the bridge company reconstructed its bridge. It removed the then existing superstructure in order to make the bridge double decked. The lower deck accommodates the steam and electric railways, and the upper level pedestrians and vehicular traffic. To-day the bridge is capable of carrying the heaviest railroad equipment.

The highway tolls paid by pedestrians and vehicles are fixed by ordinance of the city of Keokuk. The charges paid by the Keokuk Electric Railway & Power Company are fixed by the 1903 contract for a period of 25 years. The amounts paid by defendant railroads have been dependent upon various arrangements between them and the bridge company. As stated in the opening paragraph of its

brief, the bridge company "seeks to have adjusted \* \* \* the bridge tolls which defendant users of the bridge shall pay. \* \* \* Its effort is, and has been, to have its rates of toll fixed so that it would be treated in all respects as railroads treat the bridges which they own and operate."

Defendants question our jurisdiction over the matter.

The word "bridge" appears but once in the interstate commerce act. The bridge company contends that that portion of paragraph 3 of section 1 of the act, which is quoted in the margin,<sup>1</sup> gives us jurisdiction over facilities such as this bridge. The effect of this definition of the terms used in the act has been described as follows:

Bridges, ferries, switches, and terminal facilities are declared to be included within the term "railroad" not for the purpose of exempting them from any liability to publish and observe their rates when such ferries or bridges are operated by their owners as common carriers, but rather to make certain that where those agencies are employed by railroads the transportation service rendered by them shall still be subject to the provisions of the act to regulate commerce \* \* \*.

A railroad company may without doubt provide by contract with an independent company for the construction of a bridge or ferry to be used as a part of its line. It can perhaps extend its contract to the operation of the bridge or ferry by its owner when constructed, but in such case the bridge company or the ferry company is not a common carrier. The railroad is the carrier and answerable to the law as such. [*Enterprise Transportation Co. v. P. R. R. Co.*, 12 I. C. C., 326.]

Where a railway company, by contract with a bridge company, acquires the right to use a bridge with its approaches, for the engines, cars, and trains of the railway company, the first section of the "act to regulate commerce" regards the railway company as the owner or operator of the bridge and approaches, for the time being, as to all freight transported by the railway company over the bridge; and as to all such traffic the railway company, and not the bridge company, must be regarded as the common carrier. Such a bridge company is not, either in law or in fact, a common carrier of interstate traffic within the scope and meaning of said section, and it can not invoke the provisions of said act to compel railway companies to transact business with or through such bridge company. Between such a bridge company and the railway carriers of the country the act establishes no such reciprocal relations, duties, and obligations as require the latter to form business connections with the former. [*Kentucky & I. Bridge Co. v. L. & N. R. R. Co.*, 37 Fed., 567.]

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<sup>1</sup> The term "railroad" as used in this Act shall include all bridges, car floats, lighters, and ferries used by or operated in connection with any railroad, \* \* \* whether owned or operated under a contract, agreement, or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight depots, yards, and grounds, used or necessary in the transportation or delivery of any such property. The term "transportation" as used in this Act shall include locomotives, cars, and other vehicles, vessels, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported.



The bridge company argues that the portion of paragraph 3 of section 1 referred to gives us jurisdiction over the bridge even to the extent of establishing a through route which would embrace the tracks upon the bridge, notwithstanding a refusal of the bridge company to permit the passage of trains or the transportation of persons or property across its bridge. A reading of the act seems to lead to a different conclusion. Consistently throughout the act our jurisdiction is confined to common carriers. The obligations imposed by paragraph 4 of section 1 of the act, quoted in the margin,<sup>3</sup> are upon common carriers only. The bridge company does not hold itself out as ready to engage in transportation for hire as a public employment, nor has it the motive power or cars to perform such transportation. Witness for the bridge company testified that it did not furnish any transportation facilities across the bridge; that it operates no engines, issues no bills of lading, and does not perform any switching; and that "it is an expensive piece of structure."

The bridge company contends that the diversion by the Wabash of traffic to and from Keokuk via its bridge at Hannibal, Mo., gives to that defendant the bridge arbitrary set aside in the division of joint rates rather than to the bridge company if the traffic were handled over its bridge. It also points out that larger amounts are paid to railroads owning other bridges than are paid to it. That a carrier deducts an amount greater than is paid by it for the use of a bridge before dividing with its connections a joint rate does not of itself confer upon us jurisdiction to prescribe the amount to be paid for that use. That portion of the act which confers upon us jurisdiction to establish just divisions of joint rates refers only to divisions "between the carriers subject to this act."

That this bridge company is not a common carrier subject to the provisions of the act has been informally held by us in refusing to accept from it a tariff purporting to assess its charges against carriers that use its bridge. Conference ruling 381 states:

**BRIDGE COMPANIES.**—A bridge company which does not own or operate any motive power or cars and rents its bridge to an interstate carrier need not file tariffs with the Commission.

On oral argument it was contended by the bridge company that the law has been changed since the decisions and rulings herein-

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<sup>3</sup> (4) It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

before mentioned by the transportation act, 1920, but we are unable to find any change which affects the status of the bridge company or our jurisdiction in this case.

We find that the relationship between complainant and defendants is a matter of contract over which we have no jurisdiction. The complaint will be dismissed.



No. 12033.

LOUISA SCHAEFER ET AL.

*v.*

LEHIGH VALLEY RAILROAD COMPANY.

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*Submitted October 17, 1921. Decided February 25, 1922.*

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Demurrage charges assessed for detention at Townley, N. J., of carload shipments of hay found illegal as to shipments ordered reconsigned to New York harbor points; and found unreasonable on certain shipments ordered reconsigned to destinations, other than New York harbor points, subsequent to removal of embargoes. Reparation awarded.

*Herbert Goldmark* for complainants.

*R. W. Barrett* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Louisa Schaefer, executrix, and Charles Schaefer, jr., and Fred W. Schaefer, executors of Charles Schaefer, deceased, are dealers in hay and straw under the firm name of Charles Schaefer & Son, with warehouses at Townley, N. J. They allege that demurrage charges collected for detention at Townley, during April, May, and June, 1920, of 55 carload shipments of hay, originating without the state of New Jersey and ordered reconsigned to destinations east of Townley, were illegal, unreasonable, unjustly discriminatory, and unduly prejudicial. The allegations of unjust discrimination and undue prejudice were abandoned at the hearing. Reparation is asked.

The shipments moved from points in Canada and in the states of New York, Michigan, Vermont, Wisconsin, Illinois, and Ohio,  
66 I. C. C.

between March 19 and June 4, 1920, consigned to complainants at Townley. This is a local point on the Lehigh Valley 14 miles west of Jersey City, N. J., and is a reconsignment point for hay. A number of sidetracks or storage tracks, built at complainants' expense, are there maintained for use in connection with complainants' warehouses and elevator. Upon arrival of the shipments at Townley on April 1, 1920, and succeeding dates, notices of arrival were sent to complainants who, within 24 hours, gave orders in conformity with existing tariff provisions for reconsignment to various destinations, mainly New York harbor and Long Island points not specifically named.

On account of various labor strikes defendant had issued a series of embargoes, the first effective April 1, 1920, which prohibited delivery to New York harbor lighterage delivery points throughout April, May, and June, 1920, and to other points in or via New York during certain periods. Defendant refused to comply with complainants' reconsigning instructions because the desired destinations were embargoed. Complainants thereupon, without success, attempted to induce defendant to deliver the shipments at the Jersey City water line in order that complainants might move the shipments thence in their own barges, and offered to accept delivery at Grand street, Jersey City, or at other points where they might supply the trade. The record does not show that the efforts made to secure movement beyond Townley after the first orders were given included a definite request for reconsignment of specific cars, but it appears that a general appeal was made to defendant to move any or all of their cars. Because of the acute hay shortage, the customers, in some instances, removed the hay from Townley by trucks and the remaining shipments apparently were eventually reconsigned to points in the vicinity of New York.

Demurrage was assessed for periods of detention ranging from 1 to 31 days in accordance with defendant's general demurrage tariff. Its general reconsigning tariff contained the following provision:

Orders for diversion or reconsignment will not be accepted under these rules at or to a station or to a point of delivery against which an embargo is in force or, except on perishable freight, coal, coke or fuel oil, to a station or to a point of delivery against which an embargo was in force at the time that the shipment was forwarded from point of origin. Shipments made under authorized permits are not subject to this condition.

The general reconsignment tariff did not govern reconsignment of freight from Townley to New York harbor points and the special reconsignment tariff applicable thereto did not prohibit reconsignment to an embargoed point.

Defendant relies upon the *Reconsignment Case*, 47 I. C. C., 590, wherein we said at page 634:

But if the carrier specifically provides in its tariff that it will not reconsign to an embargoed point it does not hold itself out to perform such service while an embargo is in effect and the shipper must either resort to a service that the carrier does hold itself out to perform, such as reconsignment to a point not embargoed, or must hold the car at the expense of demurrage, a possibility which he assumed under the published tariffs when the car left point of origin.

Although the special tariff governing reconsignment to New York harbor points therein named did not contain a limitation upon reconsignment to embargoed points, defendant contends that the provision in the general reconsignment tariff was broad enough to put complainants upon notice, and that the demurrage charges were legally assessed upon all the shipments without regard to ultimate destination. This position is untenable, since the shippers' rights and obligations are determined by the special governing tariff and not by knowledge of defendant's usual practice indicated by other general tariffs.

Of the shipments, 17 left the points of origin prior to the effective date of the first embargo. Complainants contend that as to such shipments orders for reconsignment should have been accepted and no demurrage should have been assessed, on the ground that the original date of shipment fixed the rights and obligations attaching to a particular shipment throughout its transportation. The general reconsignment tariff provided that no orders for reconsignment would be accepted to a station against which an embargo was in force and any orders for reconsignment to destinations other than to New York harbor points would have been subject to this limitation. In *Boston Chamber of Commerce v. Director General*, 59 I. C. C., 73, we quoted and reaffirmed the rule originally stated in fifteenth section order No. 499, which reads:

Orders for diversion or reconsignment will not be accepted under these rules at or to a station or to a point of delivery against which an embargo is in force. Shipments made under authorized permits are not subject to this condition.

As to shipments which left the points of origin after the effective date of the embargoes, complainants' position is that the embargoes were so widespread as to prevent reconsignment to any points at which they could dispose of the hay; and that it was unreasonable to assess demurrage against them while there was no service available to the shippers which the carrier held itself out to perform. Defendant shows that there were unembargoed points east of Townley on all but three of the days when shipments were received at that point, but those open points were not available markets for hay. If complainants' contention were sustained, it would mean that a carrier

would be under obligation to maintain an open route to some ready market or forego demurrage no matter what exigencies compelled the embargo.

Upon brief complainants contend that in order to assess demurrage defendant should have given notice of constructive placement of the shipments at Townley after reconsignment had been refused. The constructive-placement rule, which relates primarily to shipments held on account of the inability of the consignee to receive them, apparently had no application under the facts of this case.

The general reconsignment tariff prohibited reconsignment, after removal of the embargo, to a destination against which an embargo was in force at the time the shipment was forwarded from point of origin. It is possible that some of the demurrage on shipments ordered reconsigned to destinations other than New York harbor points was assessed by reason of such provision, which was condemned in *Reconsignment Case, supra*, and later cases.

Charges were assessed on shipments wholly or partly unloaded at Townley under the average agreement plan, and charges on reconsigned shipments were assessed under the special reconsignment and demurrage tariffs. The accuracy of the charges assessed can not be determined upon this record.

We find that demurrage charges assessed on the shipments ordered reconsigned to destinations shown in defendant's New York harbor tariff were illegal; that demurrage charges assessed on shipments which originated during the existence of an embargo, but which were ordered reconsigned to destinations other than New York harbor points subsequent to the removal of such embargo, were unreasonable; and that demurrage was legally and lawfully charged on the remaining shipments. We further find that complainants paid and bore the charges found illegal and unreasonable and have been damaged thereby. Complainants should comply with rule V of the Rules of Practice and specify in their statement the points to which they ordered the shipments reconsigned.

No. 12511.  
CARNATION MILK PRODUCTS COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, AND GREAT NORTH-  
ERN RAILWAY COMPANY.

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*Submitted September 19, 1921. Decided February 25, 1922.*

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Period within which claims may be presented for the cancellation or refunding of demurrage charges assessed or collected on account of bunching of cars for unloading or reconsigning at stations on the Great Northern found not unreasonable.

*E. S. DePass* for complainant.

*F. G. Dorety* and *R. J. Hagman* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, alleges that the demurrage charges collected on 29 carloads of tin plate shipped during January, February, and March, 1918, from the Pittsburgh district in Pennsylvania to Kent, Wash., and the rules and regulations in defendants' tariffs relative to filing demurrage claims under the bunching rule, were unjust and unreasonable. We are asked to award reparation, and to establish reasonable demurrage rules and regulations for the future.

The shipments were delivered by the Great Northern at destination. They were bunched in transit and arrived between March 7 and 14, 1918, inclusive. On March 26, 1918, complainant was presented with a bill for demurrage charges in the sum of \$150, which it paid on June 1, 1918, and on June 30, 1918, filed claim for refund, payment of which was refused because the claim was not presented within 15 days as provided by the bunching rule in the Great Northern's demurrage tariff.

At the hearing it was agreed that \$138 would be the correct amount of demurrage charges to be refunded if we found the 15-day limitation unreasonable. There is left for consideration only the question of the reasonableness of the provision of the Great Northern's demurrage tariff covering the period of time within which claims

may be presented for the cancellation or refunding of demurrage charges assessed or collected on account of bunching of cars for unloading or reconsigning at stations on its line.

The proceedings leading up to the publication by the carriers in 1910 of a code of uniform demurrage rules have been outlined by us in former reports. *In re Demurrage Investigation*, 19 I. C. C., 496; *Michigan Mfrs. Asso. v. P. M. R. R. Co.*, 31 I. C. C., 329. The bunching rule then published provided that claims must be filed before the expiration of the free time allowed, which was 48 hours. On October 1, 1912, the time was extended to 15 days and on December 1, 1919, to 30 days. Prior to the latter date, and subsequent to 1913, the Great Northern's demurrage rules were published in its individual tariffs, but the provision applicable to these shipments was the same as that published by other lines. Since December 1, 1919, the code of uniform demurrage rules and charges has been published in one tariff for all carriers.

Complainant contends that 15 days was not, and 30 days is not, a reasonable time within which to assemble the information necessary to determine whether bunching has occurred, and, if so, to prepare and present a claim to the carrier. This information includes car initials and number; contents of car; date and point of shipment; dates of arrival, constructive placement, actual placement, and release; and weather conditions. It points out that the period for filing loss and damage claims is six months, which does not apply when a shipment is damaged through the negligence of the carrier; that the tariffs provide no time limit within which claims for overcharges may be filed, or carriers may bill shippers for undercharges or render demurrage bills. It contends, therefore, that filing of claims under the bunching rule should be permitted at any time, or at least that the period should not be less than six months, especially since the rule may be invoked only as a result of the act or negligence of the carrier. It further asserts that the carriers recognized the unreasonableness of the 15-day period by providing on December 1, 1919, that claims must be presented within 30 days after the date on which the demurrage bill is rendered.

The agent of the delivering line does not in every case have in his possession all information necessary to determine whether or not bunching has occurred through carrier negligence. The consignee generally has that information by the time the cars are released. The only information which under the tariffs must be furnished to the carrier was and is the date and point of shipment of each car. It clearly appears that preparation of loss and damage claims involves the collection of considerably more data than are required for claims under the bunching rule.

Complainant criticizes the rule as published prior to December 1, 1919, on the ground that the time limit might and probably would be overlooked, and, further, did not specify from what date the 15 days must be computed, whether that on which the demurrage charges accrued, the bill was rendered, or the charges were paid. Whichever date was used, complainant's claim would have been barred. The present rule is not open to these objections. The practice at that time under the Great Northern tariff was to consider the limitation as applying from the date when the demurrage bill was rendered, as has been specifically provided since December 1, 1919. Complainant does not contend that it was unaware of the provision, and there is nothing in the record to indicate that it was unable to prepare and file its claim within 15 days after rendition of the demurrage bill.

Defendants deny that the period was extended to 30 days on December 1, 1919, because of any complaint or because they were of opinion that 15 days was an unreasonable period. Since the code of uniform demurrage rules was published in 1910 it has been the carriers' policy to make no changes therein, whether proposed by carriers or shippers, which have not been fully considered by the American Railway Association, working in cooperation with the National Industrial Traffic League, an association of shippers. It was in this manner that the period was extended to 15 days on October 1, 1912. In 1917 committees of those organizations undertook the work of recodifying the rules. The committees agreed to permit the filing of claims for refund of demurrage paid on account of weather interference and to limit that period to 30 days. The weather and bunching provisions were contained in the same rule, and in order to avoid confusion it was further agreed to extend the period for filing claims on account of bunching to 30 days. The present provision is national in scope and apparently has been and is satisfactory to practically all shippers. This is the first formal complaint against it which has been filed with us. No special circumstances or conditions appear which would warrant the making of an exception in favor of points on the Great Northern.

We find that the rule assailed was not and is not unreasonable. The complaint will be dismissed.



No. 12096.

BOTANY WORSTED MILLS ET AL.

v.

DIRECTOR GENERAL, AS AGENT, BOSTON & ALBANY  
RAILROAD COMPANY, ET AL.

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*Submitted August 6, 1921. Decided February 25, 1922.*

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Rates on wool in the grease, in carloads, from Boston and East Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J., found not unreasonable or unduly prejudicial. Complainants not shown to have been damaged by reason of any undue prejudice or preference that may have existed. Complaint dismissed.

*Lewis H. Rubin* for complainants.

*H. A. Davis* for Boston Wool Trade Association, intervener.

*Royal T. McKenna* and *Fred W. Heid* for Director General of Railroads; *Wm. L. Barnett* for New York, New Haven & Hartford Railroad Company; and *Geo. H. Fernald, jr.*, for New York Central Railroad Company, Boston & Albany Railroad Company, and West Shore Railroad Company.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by the intervener to the report proposed by the examiner.

Complainants, New Jersey corporations manufacturing and selling wool and worsted yarns and cloth, with factories at Passaic and Garfield, N. J., allege by complaint filed January 3, 1921, as amended, that the rates charged for the transportation of wool in the grease, in bags and bales, in carloads, between January 1, 1919, and October 24, 1920, inclusive, from Boston and East Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J., were unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded commodity rates contemporaneously in effect on similar traffic from the same points to Philadelphia, Manayunk, and Darby, Pa., and Camden and Trenton, N. J. Reparation is sought. Rates will be stated in cents per 100 pounds. The Boston Wool Trade Association intervened in behalf of complainants.

66 I. C. C.

The shipments moved over the lines of the defendant carriers and charges were properly collected at the third-class rate of 39.5 cents prior to August 26, 1920, and 55.5 cents thereafter. Contemporaneously, commodity rates of 36.5 and 51 cents, respectively, were in effect from Boston and East Boston to the Philadelphia rate group named. In October, 1920, the commodity rates to Philadelphia points were eliminated and the third-class rate made effective, thus placing both destination groups on a parity. The shortest available rail routes from Boston are: To Passaic, over the New York, New Haven & Hartford via Campbell Hall, N. Y., and the Erie, 303 miles, and to Philadelphia, over the New York, New Haven & Hartford via New York City and Pennsylvania or Central of New Jersey and Philadelphia & Reading, 305 miles. By the Boston & Maine and Boston & Albany and their connections the distances are greater, with a wider difference between Passaic and Philadelphia, but the New York City terminals are avoided. Wool in the grease loads about 20,000 pounds per car, with a tariff minimum of 16,000 pounds, and moves in ordinary equipment.

Boston is recognized as the wool center of the United States and is the chief source of supply for the mills in both these groups, which use large quantities in the manufacture of woolen goods for sale in competitive markets. During the year 1918 the state of Pennsylvania, with 371 woolen mills, consumed over 76,000,000 pounds of wool, and New Jersey, with 44 mills, consumed over 63,000,000 pounds. Not all was purchased in the Boston market, since New York and Philadelphia, as well as Chicago and farther west cities, handle considerable wool in the grease. During that year approximately 27,000,000 pounds were received by complainants. The term "wool in the grease" means the raw uncleaned product as received from the producing regions. In scouring this wool for manufacturing purposes there is a shrinkage in weight of 20 to 50 per cent, depending upon the grade.

The rates on finished woolen products in the opposite direction were the same from the two groups; and the rates on many other articles, such as cotton piece goods, packing-house products, and iron and steel, as well as the class rates, were the same from Boston territory to both groups over one or more of defendants' routes. Complainants usually pay no higher rates on wool in the grease than are paid by their competitors in the Philadelphia group. This was apparently recognized by the carriers in the subsequent restoration of the rate parity.

As tending to show the unreasonableness of the rates assailed, comparison is made with a contemporaneous commodity rate of 34.5 cents on cotton piece goods, in less-than-carload lots, between the 66 I. C. C.

same points. These goods have somewhat similar transportation characteristics, but being manufactured products are not subject to the loss from waste which attends wool in the grease. The latter is rated fourth class in western classification, third class in official, and these ratings were approved in *Boston Wool Trade Asso. v. A. & S. Ry. Co.*, 64 I. C. C., 365, for the reasons stated therein. East of the Hudson River fourth-class rates, as exceptions to official classification, apply in the absence of commodity rates. Intervener endeavored to show that the higher rating to markets west of the Hudson River is unduly prejudicial to the Boston wool trade, but this is a matter beyond the scope of the present case.

For the defense it is shown that the all-rail commodity rates between Boston and Philadelphia, as far back as 1900, were established to meet water competition, and that the tariffs carried a clause to that effect, prohibiting their use to intermediate points. They were extended subsequently to reach a number of suburban and near-by Philadelphia points, such as West Philadelphia, Tacony, and Bristol, Pa., and later to Manayunk, Camden, and Trenton. Until 1915 the water rates were on an any-quantity basis. During the period covered by the complaint they were identical with the all-rail rates. Prior to March 25, 1918, the rail commodity rates northbound from Philadelphia to Boston were the same as the southbound rates. On that date the former were canceled. Application for authority to cancel both rates had been made to us by the carriers on August 18, 1917, but as to the southbound rates was denied in *The Fifteen Per Cent Case*, 45 I. C. C., 303, and they remained in effect until October, 1920, as stated. Simultaneously with the cancellation of the southbound rate the water line filed revised tariffs to increase its rate to the third-class basis, but this was suspended and denied after hearing by the United States Shipping Board in *Wool Rates from Boston to Philadelphia*, 1 U. S. S. B., 20. In 1916 the spread between the rail rates to the two groups was 8 cents in favor of the Philadelphia group, and it was even higher some years before, but it appears not to have been questioned by the New Jersey mill operators. In developing the extent of the water competition, defendants show that during the period covered by this complaint approximately 41,000,000 pounds of wool in the grease were transported by water lines and 39,000,000 pounds by rail from Boston to Philadelphia and near-by points. During the same time 31,600,000 pounds moved by rail from Boston to the Passaic group.

For the short-line distance of 303 miles from Boston to Passaic, and average car loading of 10 tons, the applicable rate of 39.5 cents prior to August 26, 1920, yielded earnings of 26 cents per car-mile and 26 mills per ton-mile. By the two longer routes the earnings

were as low as 12 or 13 cents per car-mile. In and of themselves these earnings were not excessive.

We find that the rates assailed were not unreasonable or unduly prejudicial. The record does not show that complainants suffered damage because of the alleged undue prejudice and undue preference between the two groups. By subsequently placing the two groups on a parity whatever undue prejudice or preference may have existed has been removed.

An order will be entered dismissing the complaint.

66 I. C. C.

No. 12222.

WILLIAM L. CARNEY

v.

DIRECTOR GENERAL, AS AGENT, AND CHICAGO, TERRE  
HAUTE & SOUTHEASTERN RAILWAY COMPANY.

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*Submitted November 9, 1921. Decided February 25, 1922.*

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Bituminous coal, in carloads, from mines in Indiana to Chicago, Ill., found misrouted. Complainant found not to be the real party in interest and reparation denied.

*William L. Carney* for complainant, in person.

*Royal McKenna* for Director General, as Agent.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a public traffic manager at Chicago, Ill., by complaint filed January 28, 1921, alleges that the rates charged on five carloads of bituminous coal shipped between April 10 and September 16, 1918, from Kettle Valley, Fayette, Lenoir, and Essanbee, Ind., to Chicago, were in excess of those applicable. Reparation is sought.

The points of origin are on the Chicago, Terre Haute & Southeastern, hereinafter referred to as the Terre Haute. The shipments moved over that line to Blue Island, Ill., within the Chicago switching district, and were there turned over to the Baltimore & Ohio Chicago Terminal, hereinafter called the Terminal, or the Indiana Harbor Belt, for delivery to consignees on the tracks of the Grand Trunk, New York Central, and Chicago, Milwaukee & St. Paul.

Charges were assessed by adding to the line-haul charges of the Terre Haute a charge of \$2 per car for switching by the other lines named to the several points of delivery. The shipments from Kettle Valley moved after June 25, 1918, and the line-haul charges were collected at a rate of \$1.42 per net ton. The shipments from the other points of origin moved before June 25, 1918, and charges were collected at rates of 97 cents per net ton from Fayette and Essanbee, and \$1.07 from Lenoir.

66 I. C. C.

The tariffs of the Terre Haute publish the Chicago basis of rates to all points on the Terminal in Chicago when shipments move via Faithorn, Ill., as did these shipments. The terminal clause in the tariff states that the rules and regulations of the delivering carrier will govern on traffic destined to points beyond the rails of the Terminal. Agent Lowrey's tariff applicable during the period of movement shows the Terminal as an issuing carrier, and provides that the Terminal will apply on traffic moving into Chicago over that line, for delivery to connecting lines within the Chicago district, the flat Chicago rate basis, without additional switching charges.

The Terre Haute has direct track connection with the Terminal at or near Chicago Heights, Ill., outside the switching district. It could have made delivery there to the Terminal and permitted that line to move the shipments into Chicago, thus avoiding the necessity for assessing any extra switching charge.

Defendants contend that under a trackage contract the Terre Haute operates over the tracks of the Terminal from the connection at Chicago Heights to Blue Island, and point out that the latter is considered the junction point of the two lines. The Terminal publishes local rates from Chicago Heights to Chicago, and if a shipment originated at Chicago Heights and moved into Chicago over that line, the absorption provision would apply and the straight Chicago rate would be assessed.

But notwithstanding this trackage contract the junction at or near Chicago Heights still exists. The shipments were delivered to the Terre Haute unrouted, and the shipper was entitled to the cheapest available and reasonable route. Nothing in the record indicates that it would have been unreasonable routing to deliver to the Terminal at the Chicago Heights junction. If the shipments had been so handled the Terminal would have performed a line haul into Chicago, and the consignees would have been relieved of the switching charge.

We find that the shipments were misrouted. Complainant is not the party in interest, so far as reparation is concerned, and no award of reparation can be made.

The complaint will be dismissed.

No. 12256.

CHOATE OIL CORPORATION ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATLANTA, BIRMINGHAM & ATLANTIC RAILWAY COMPANY, ET AL.

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PORTIONS OF FOURTH SECTION APPLICATION NO. 700.

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*Submitted October 15, 1921. Decided February 25, 1922.*

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1. Combination rates on fuller's earth, in carloads, from Midway, Quincy, and Ellenton, Fla., to Oklahoma City, Okla., found unreasonable and unduly prejudicial. Reparation awarded.
  2. Fourth section relief denied.

*H. D. Driscoll*, for complainants.

*M. G. Roberts* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are the Choate Oil Corporation and the Home Petroleum Company, corporations refining crude petroleum at Oklahoma City, Okla. By complaint filed February 11, 1921, they allege that the rates charged by defendants on 26 carloads of fuller's earth, shipped between December 18, 1919, and December 12, 1920; 21 from Midway, 1 from Quincy, and 4 from Ellenton, all in the state of Florida, to Oklahoma City, were unreasonable, unduly prejudicial, and in violation of the long-and-short-haul provision of the fourth section of the interstate commerce act. We are asked to award reparation and to establish just and reasonable rates for the future. Except as noted, rates will be stated in amounts per 100 pounds.

Fuller's earth is used in the filtration of lubricating oil. Under normal conditions complainant Choate Oil Corporation consumes from 60 to 75 tons a month, which it obtains in Florida. This commodity is produced also in Texas but the Florida product is better suited to that complainant's requirements. Its value at the time of hearing was about \$21 per ton at point of shipment.

66 I. C. C.

Combination rates based on either Memphis, Tenn., or St. Louis, Mo., were and are applicable. Complainants' evidence relates chiefly to the rates via Memphis, particularly the components west of that crossing.

Three of the shipments from Midway, aggregating 178,000 pounds, moved via St. Louis after August 26, 1920, and charges were collected at rates of \$8.65 per net ton to St. Louis and 37 cents beyond. The applicable combination was 80.35 cents, composed of \$8.67 per net ton, equivalent to 43.35 cents per 100 pounds, to St. Louis and 37 cents beyond. These shipments were therefore undercharged. With one exception, the other shipments moved via Memphis over the following lines beyond that point:

Route of movement.	Prior to Aug. 26, 1920.		Aug. 26, 1920, and after.	
	Carloads.	Weight.	Carloads.	Weight.
		<i>Pounds.</i>		<i>Pounds.</i>
Missouri Pacific and Fort Smith & Western.....	8	510,100	2	128,580
St. Louis-San Francisco.....	3	185,000	3	195,647
Rock Island.....	3	160,400	1	63,100
Missouri Pacific, Fort Smith & Western, and Rock Island.....	1	71,200		
St. Louis-San Francisco and Rock Island.....	1	50,520		

One car, weighing 41,385 pounds, moved after August 26, 1920, from Ellenton via Cairo, Ill., thence over the St. Louis Southwestern to Brinkley, Ark., and the Rock Island beyond.

Prior to August 26, 1920, the rates applicable via Memphis from Midway and Quincy were 73.5 cents, composed of a commodity rate of \$4.40 per net ton, equivalent to 22 cents per 100 pounds, to Memphis, and the class-C rate, governed by the western classification, of 51.5 cents beyond; and from Ellenton, 79.5 cents, made up of a commodity rate of \$5.60 per net ton, equivalent to 28 cents per 100 pounds, to Memphis, and the class-C rate of 51.5 cents beyond. Those applicable since the general increases of August 26, 1920, have been 97 cents from Midway and Quincy and \$1.045 from Ellenton. Charges of \$10,703.19 were collected on the shipments transported via Memphis, generally at the applicable rates. The shipment from Quincy and two from Midway delivered by the St. Louis-San Francisco in cars B. & O. 191635, I. C. 20620, and B. M. 47007, were charged at a combination rate made up of \$8.65 per net ton and 37 cents, the basis for which does not appear. Charges of \$432.48 were collected on the shipment that moved via Cairo at the applicable combination rate of \$1.045, based on Memphis.

Comparison of the components of the combination rates assailed and those to the basis of which reparation is sought, with rates on 66 I. C. C.



fuller's earth from Memphis to a number of other points, is made in the following table compiled from an exhibit of record. The distances used are said to be those over the short-line workable routes.

From Memphis to—	Distance.	Dec. 18, 1919, to Aug. 25, 1920, inclusive.		Aug. 26, 1920, to July 24, 1921.	
		Rate.	Ton-mile earnings.	Rate.	Ton-mile earnings.
	<i>Miles.</i>	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>	<i>Mills.</i>
Oklahoma City, Okla.....	486	51.5	21.2	69.5	28.6
Do.....	485	27.5	11.3	37	15.2
Cushing, Okla.....	496	27.5	11.1	37	15
Okmulgee, Okla.....	452	27.5	12.2	37	16.4
Ponca City, Okla.....	581	34	11.7	46	15.8
Tulsa, Okla.....	470	27.5	11.7	37	15.7
Muskogee, Okla.....	384	27.5	14.3	37	19.3
Independence, Kans.....	442	27.5	12.4	37	16.7
Arkansas City, Kans.....	563	27.5	9.8	37	13.1
Amarillo, Tex.....	764	36.5	9.6	49.5	13
Fort Worth, Tex.....	496	30	12.1	40.5	16.3
Gainessville, Tex.....	478	30	12.5	40.5	16.9
Wichita Falls, Tex.....	567	30	10.6	40.5	14.3

<sup>1</sup> Rate to the basis of which reparation is sought.

In selling the lubricating oil which it manufactures complainant Choate Oil Corporation competes with various other refineries, including one at Tulsa, Okla., which also obtains its supply of fuller's earth from Florida points before named.

A rate of 37 cents on fuller's earth is maintained from St. Louis to Oklahoma City, 543 miles; Cushing, 530 miles; Okmulgee, 469 miles; Tulsa, 424 miles; and Muskogee, 434 miles. Prior to August 26, 1920, this rate was 27.5 cents. The present joint-line distance commodity rates on fuller's earth, both intrastate and interstate, between points in Texas and between Shreveport, La., and Texas points for the distance from Memphis to Oklahoma City are lower than the 37-cent rate sought. On July 25, 1921, defendants established the 37-cent rate from Memphis to Oklahoma City.

The rates between Memphis and Oklahoma City on a number of other commodities, rated the same as and, in some instances, higher than fuller's earth, were and are less than the rates assailed. Among these are rates from Memphis to Oklahoma City of 29 cents on lime, 29.5 cents on cement, 25 cents on enameled brick, and 27.5 cents on plaster board, prior to August 26, 1920, and thereafter 39, 40, 34, and 37 cents, respectively; and the present rates from Oklahoma City to Memphis of 37 cents on refined oil and 25.5 cents on crude asphalt.

Prior to August 26, 1920, there were in effect on fuller's earth joint commodity rates of 57 cents to Amarillo, Tex., from Quincy, and

63.5 cents from Ellenton. On that date they were increased as authorized by us to 76 and 84.5 cents, respectively. Rates on fuller's earth to Amarillo from Midway, made by combination on Memphis, were and are lower than the rates assailed. Oklahoma City is intermediate by certain of defendant carriers' lines from Midway, Quincy, and Ellenton to Amarillo and portions of the fourth section application protecting this adjustment were assigned for hearing with the complaint.

Defendants were represented at the hearing, but submitted no evidence.

We find that the combination rates assailed were not unreasonable or unduly prejudicial except to the extent that the components thereof from Memphis to Oklahoma City exceeded 27.5 cents per 100 pounds prior to August 26, 1920, and 37 cents per 100 pounds thereafter. We further find that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that they are entitled to reparation with interest. Complainants should comply with rule V of the Rules of Practice.

An order will be entered denying the fourth section application to the extent that it is here involved.

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No. 10122.  
STANDARD TIME ZONE INVESTIGATION.

*Submitted January 4, 1922. Decided March 13, 1922.*

Orders defining limits of United States standard Eastern and Central time zones, 51 I. C. C., 273, and 53 I. C. C., 208, modified in part.

*Frank M. Dottson* and *Charles T. Lawton* for city of Toledo, Ohio; *L. G. Macomber* for Toledo Chamber of Commerce; *William H. McCloud* for Willys-Overland Company; and *A. H. Bechtel* for Knights of the Grip Club.

*E. F. Blomeyer* and *V. Parvin* for Ann Arbor Railroad Company; *Charles Selden* for Baltimore & Ohio Railroad Company; *Frank S. Lewis* for Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Michigan Central Railroad Company, New York Central Railroad Company, and Toledo & Ohio Central Railway Company; *R. M. Shepherd* for Detroit & Toledo Shore Line Railroad Company; *Fred C. Rector* for Hocking Valley Railway Company; *W. J. Stevenson* and *W. F. Waterson* for New York, Chicago & St. Louis Railroad Company; *W. H. Henderson* for Pennsylvania Railroad Company; *D. F. Milne* for Toledo, St. Louis & Western Railroad Company; *J. F. Withrow* for Toledo Terminal Railroad Company; *J. T. MacFarland* for Wabash Railway Company; and *H. V. Wiley* for Wheeling & Lake Erie Railway Company.

*Oliver Myers* for Electrical Workers & Building Trades Association of Toledo; *H. G. Ebright* and *John J. Dean* for National Association of Machinists of Toledo, Ohio; and *John J. Quinlivan* for Toledo Central Labor Union.

SEVENTH SUPPLEMENTAL REPORT OF THE COMMISSION.

DIVISION 1, COMMISSIONERS McCHORD, AITCHISON, AND LEWIS.

*AITCHISON, Commissioner:*

By orders issued in connection with the original report, 51 I. C. C., 273, and a supplemental report, 53 I. C. C., 208, we defined the boundary between the United States standard Eastern and Central time zones in such a way as to divide the state of Ohio by a line beginning at a point just west of Sandusky and extending in a southerly and easterly direction through Bellevue, Monroeville, Mansfield, Mount Vernon, and Newark, and thence to a point on the Ohio River, where it is crossed by the meridian 82° west. Under the present adjustment the city of Toledo, Ohio, is included in the

63 I. C. C.

standard Central time zone. On December 8, 1921, that city petitioned us to modify our orders heretofore entered so as to include Toledo within the standard Eastern time zone. A rehearing has been had, and all interested parties have been heard.

By our original report and order we fixed the boundary so as to pass through the city of Toledo, and prescribed standard Central time for that municipality. This did not require any change in the standard of time then in use in that city. Subsequently the Commerce Club of Toledo petitioned us to place Toledo within the limits of the Eastern zone. A public hearing was held at which it developed that the citizens of that municipality were unable to agree among themselves upon either Central or Eastern time, and the city council took no decisive action when the question was before it. In our supplemental report, 53 I. C. C., 208, we found upon the record then made that it was not shown that the greater convenience of commerce would be served by modifying the limits of the time zone so as to include Toledo within the standard Eastern time zone, and denied the petition. New facts are now before us.

On November 8, 1921, the council of the city of Toledo submitted to the voters the question whether that city should continue to observe United States standard Central time or adopt standard Eastern time. By a vote of 33,604 to 15,519 the electorate expressed a preference for Eastern time. Representatives of several commercial organizations and business institutions of Toledo, testified that the greater convenience of commerce would be served by including Toledo within the standard Eastern time zone. Some opposition to the petition was expressed by representatives of labor organizations, who claimed that the use of standard Eastern time in Toledo would result in many people being compelled to perform a considerable portion of their duties and labors before sunrise, and that this was particularly objectionable during the cold winter months. Since the election and the adoption of a resolution by the city council on November 21, 1921, requesting us to place Toledo in the Eastern time zone, that city has observed the advanced standard of time more or less generally. It appears, however, that one of the public schools and some of the business institutions have changed their hours of opening to 30 minutes later than usual, so as to be more nearly on sun time. Standard Eastern and Central times at Toledo are approximately 34 minutes faster and 26 minutes slower than sun time, respectively. Toledo is so close to the median line between the standard-time meridians that the city could be placed within either zone without material deformation of the normal zone lines.

Upon consideration of the present record we find that the greater convenience of commerce will be served and the intent of our preceding orders better effected by modifying our previous reports and

orders herein so as to include Toledo within the standard Eastern time zone. This will necessitate a slight change in the present boundary line in northern Ohio, to which no opposition has been made.

The description of so much of the boundary line between the United States standard Eastern and Central time zones as defined in Appendix 1 of the original report, 51 I. C. C., 287, 288, and in the supplemental report, 53 I. C. C., 210, as located within the states of Michigan and Ohio will, therefore, be amended to read as follows:

*Michigan-Ohio.*—Beginning on the boundary line between the United States and Canada east of Port Huron, Mich.; thence southerly along the international boundary line through the St. Clair River, Lake St. Clair, Detroit River, and Lake Erie to the intersection of the international boundary line with the boundary line between the states of Ohio and Michigan; thence westerly and southerly along the north line of Ohio to the Ottawa River; thence southwesterly along the thread of the Ottawa River to the Toledo Terminal Railroad; thence westerly, southerly, easterly, and northerly immediately and respectively south, east, north, and west of and parallel with the Toledo Terminal Railroad to its intersection with the New York Central Railroad at Vickers; thence easterly and southerly immediately south and west of and parallel with the New York Central Railroad to Monroeville, crossing in said course the Lake Erie & Western Railroad at Fremont, the Cleveland, Cincinnati, Chicago & St. Louis Railway at Clyde, the New York, Chicago & St. Louis Railroad, and the line of the Pennsylvania Company at Bellevue; thence southerly immediately west of and parallel with the Baltimore & Ohio Railroad to the northern boundary line of Perry county, near Bruno, crossing in said course the Baltimore & Ohio Railroad at Willard, the Northern Ohio Railway at Plymouth, the Cleveland, Cincinnati, Chicago & St. Louis Railway at Shelby Junction, the Chicago division of the Pennsylvania Company, and the Erie Railroad at Mansfield, the lines of the Pennsylvania Company at Mount Vernon and Newark, and the line of the Baltimore & Ohio at Newark; thence easterly and southerly along the boundary line between Perry county and Licking and Muskingum counties to the northwest corner of Morgan county, crossing in said course the Baltimore & Ohio Railroad near Bruno, the Zanesville & Western Railway near Fultonham and East Fultonham, and the Zanesville division of the Pennsylvania Company at Roseville; thence easterly along the northern boundary line of Morgan county to the meridian 82° west; thence south along said meridian to the Ohio River, crossing in said course the Federal Valley Railroad at Lewis and the Baltimore & Ohio Railroad at Canaanville; thence following the Ohio River along the line between Ohio and West Virginia southerly and westerly to the junction of the states of Ohio, West Virginia, and Kentucky.

In consequence of the change of boundary line above indicated, the Cleveland, Cincinnati, Chicago & St. Louis Railway will be permitted to operate under standard Central time to Sandusky from Clyde, and the Lake Erie & Western Railroad from Fremont. The table at the top of page 211 of the supplemental report, 53 I. C. C., 208, shall therefore be amended by substituting "Clyde, Ohio" and "Fremont, Ohio," respectively, for "Sandusky County, Ohio" in the two instances in which the latter occurs therein. The New York Central Railroad from Toledo, Ohio, to Erie county, Ohio, and to

Bellevue, Ohio, shall be eliminated from the list of railroads named at page 211 of said supplemental report as located west of the zone boundary line, but as excepted from the United States standard Central time zone and included within the United States standard Eastern time zone. All carriers engaged in interstate commerce entering Toledo from the north, west, and south, and the Toledo Terminal Railroad, may continue to operate into the city of Toledo under standard Central time, even though a portion of their several lines will lie within the United States standard Eastern time zone as herein defined in part. But in the instances where, for operating purposes, carriers are herein permitted to carry the standard time of one zone into an adjoining zone, the Commission expects that they will, in their published advertisements, their time cards, bulletin boards in stations, and in other like ways, show the arrival and departure of their trains with reference to United States standard time as prescribed for general use in the several communities.

An order will be entered to carry these findings into operation, effective at 2 o'clock ante meridian on April 1, 1922.



INVESTIGATION AND SUSPENSION DOCKET No. 1449.

CANCELLATION OF RATES ON WOODEN PAVING-BLOCK MATERIAL FROM ALABAMA, FLORIDA, AND GEORGIA TO NORFOLK, VA., ETC.

*Submitted February 4, 1922. Decided March 25, 1922.*

Proposed cancellation of specific rates on wooden paving-block material from points in Alabama, Florida, and Georgia to Norfolk and other points found justified. Order of suspension vacated.

*Frank W. Gwathmey* for respondents.

*R. B. Coapstick* for protestant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective December 10, 1921, respondents propose to cancel the specific rates on wooden paving-block material, in carloads, from certain points in Alabama, Florida, and Georgia, to Norfolk, Pig Point, Portsmouth, and Newport News, Va., and to substitute therefor the prevailing lumber rates which are higher. Upon protest of the Republic Creosoting Company, 66 I. C. C.

which manufactures paving blocks and creosotes forest products at Norfolk and other points, the operation of the schedules was suspended until May 9, 1922.

There is no substantial difference from a transportation standpoint between paving-block material and other lumber. Its average loading per car is the same from the southeast, about 52,000 pounds. Newport News generally takes the same rates as Norfolk, but the movement of this commodity is to Norfolk proper, Portsmouth, and other points in the Norfolk switching district. After being subjected to the processes of sawing, dressing, and creosoting, it moves out under the local lumber rates to destinations in trunk line and New England territories.

Protestant's principal competitors are located at Atlanta and Savannah, Ga., and Jacksonville, Fla., where creosoting-in-transit arrangements are in effect. Under these the joint lumber rate from point of origin to ultimate destination, plus a transit charge, is assessed on forest products subjected to the creosoting process. Protestant introduced evidence tending to show that the proposed increases in the inbound rates to Norfolk would create so great a disparity between the total charges via that point and the charges via competing points that the Norfolk plants would be forced to discontinue operations. It admitted that a creosoting-in-transit arrangement at Norfolk would remove this disparity and stated that if such an arrangement were established it would have no objection to the proposed increases. Since the hearing the carriers have filed tariffs with us providing for creosoting in transit at Norfolk. Under the circumstances the cancellation of the specific inbound rates on paving-block material would appear to be proper.

We find that the suspended schedules have been justified. An order will be entered vacating our order of suspension and discontinuing this proceeding.

No. 11950.<sup>1</sup>

MINNESOTA &amp; ONTARIO PAPER COMPANY ET AL.

v.

NORTHERN PACIFIC RAILWAY COMPANY ET AL.

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Submitted January 7, 1922. Decided March 14, 1922.

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1. Rates on certain kinds of paper and paper articles, in carloads, from points in Wisconsin, Minnesota, and Michigan to destinations in the west, southwest, and Mississippi Valley, found unreasonable and unduly prejudicial. Reasonable rates and relationships prescribed.
2. Rates from certain other points in Indiana, Illinois, Missouri, and Kansas to Oklahoma City and Okmulgee, Okla., and Wichita, Kans., found unreasonable. Reasonable rates prescribed and reparation awarded.
3. Order in 61 I. C. C., 709, as modified in 64 I. C. C., 33, rescinded.

*Thomas L. Phillips* for complainants in No. 11950; *Borders, Walter, Burchmore & Collin* for complainants in No. 11981; *C. R. Hillyer* for complainant in No. 12108; *H. D. Driscoll* and *F. J. Wright* for complainants in Nos. 11846, 11846 (Sub-No. 1), and 11864; and *A. E. Helm, P. A. Conway, and W. P. Huston* for complainants in No. 11836.

*H. D. Driscoll* for Williamson-Halsell-Frazier Company; *A. H. Campbell* and *Wilbur LaRoe, jr.*, for International Paper Company; *Wilbur LaRoe, jr.*, for Continental Bag & Paper Company; and *Frank A. Larish* for Michigan Paper Mills Traffic Association, interveners.

*Charles E. Elmquist, L. M. Shepardson, H. D. Driscoll, Ed P. Byars, O. G. Pratt, Oliver E. Sweet, Daniel L. Kelley, C. B. Bee, R. W. Campbell, C. C. Furguson, T. B. Dooling, E. F. Brown, W. N. Webb, C. R. Hillyer, W. D. Hurlburt, T. T. Webster, D. D. Devine,* and *E. N. Adams* for various interveners.

*B. W. Scandrett, F. G. Dorety, A. H. Lossow, R. H. Widdicombe, J. N. Davis, T. J. Norton, F. E. Andrews, H. L. McCracken, M. G. Roberts, Robert N. Nash, George E. Schnitzer, B. F. E. Marsh, C. C. P. Rausch, R. C. Trovillion, J. C. LaCoste, A. B. Enoch, C. S. Burg,* and *H. G. Herbel* for defendants.

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<sup>1</sup> This report also includes No. 11981, Lake Superior Paper Company et al. v. Ahnapee & Western Railway Company et al.; No. 12108, Wisconsin Traffic Association v. Chicago & North Western Railway Company et al.; No. 11836, Wichita Board of Commerce et al. v. Director General, as Agent, et al.; No. 11846, Oklahoma Publishing Company et al. v. Director General, as Agent, et al.; No. 11846 (Sub-No. 1), Times Publishing Company et al. v. Director General, as Agent, et al.; No. 11864, Oklahoma Paper Company et al. v. Director General, as Agent, et al.; and No. 11028, Lake Superior Paper Company et al. v. Director General, as Agent, et al.



## REPORT OF THE COMMISSION.

## DIVISION 4, COMMISSIONERS MEYER, EASTMAN, AND POTTER.

EASTMAN, *Commissioner*:

These cases are related and will be disposed of in one report. Upon consideration of the exceptions filed we have reached conclusions which differ in some respects from those suggested by the examiners in their proposed report.

Nos. 11950, 11981, and 12108 were brought by numerous manufacturers of paper and paper articles. They were heard together and present the following issues: No. 11950, the reasonableness of the rates on newsprint from International Falls, Minn., and Fort Frances, Ontario, to points west and south of the Missouri River in Nebraska, Kansas, Missouri, Oklahoma, Texas, Arkansas, and Louisiana; No. 11981, the reasonableness of the rates on newsprint from Sault Ste. Marie, Ontario, hereinafter called the Soo, to points west and south of the Missouri River in the states named and to Colorado common points; and No. 12108, the reasonableness of the rates on newsprint, printing or book paper, wrapping paper, writing paper, toilet paper, and other paper articles, from the Fox River group in Wisconsin to all destinations included in the two other cases, and to points in North Dakota, South Dakota, Minnesota, Wisconsin, northern Michigan, Illinois, Iowa, eastern Missouri, and the lower Mississippi Valley, including Memphis, Tenn., New Orleans, La., and other points, and the relationship of such rates to the corresponding rates from International Falls, the Soo, and other paper-producing points in Minnesota, Wisconsin, and upper Michigan. Complainants in No. 12108 also pray for a division of paper and paper articles into three groups, the rate on printing or book and wrapping paper, hereinafter termed printing paper, to be higher than on newsprint, and the rate on writing and toilet paper, hereinafter termed writing paper, to be higher than on printing paper. In general, in this western territory, the same rate has applied to all kinds and grades of paper. No. 12108 further brings in issue the minimum carload weights on paper and paper articles and the rule governing shipments in mixed carloads. The complainants in each of these three cases have intervened in the other two. There are numerous other interveners.

The three other complaints were brought by consumers of paper at Wichita, Kans., Oklahoma City, and Okmulgee, Okla. They were heard separately and present the following issues: No. 11836, the reasonableness and relationship of the rates on newsprint from points in Minnesota and Wisconsin, Chicago, Ill., and points taking the same rates, Alexandria, Ind., St. Louis, Mo., and Fort Frances,

Ontario, to Wichita; No. 11846 and Sub-No. 1, the reasonableness and relationship of the rates on newsprint from the points of origin named in No. 11836 and from Groos, Manistique, and Munising, Mich., Sturgeon Falls, Ontario, the Soo, and points basing thereon, to Oklahoma City and Okmulgee; and No. 11864, the reasonableness and relationship of the rates on various kinds of paper and paper articles from points in Minnesota, Illinois, Michigan, Ohio, Missouri, Kansas, and Wisconsin to Oklahoma City. Reparation is asked in these cases.

Little objection has been offered to the grouping of paper and paper articles proposed by complainants in No. 12108. The Continental Bag & Paper Company, intervener, contends that printed as well as unprinted paper bags should be grouped with printing paper instead of with writing paper. Printing increases the value by about 10 per cent. The two kinds of bags are frequently shipped together, and in such instances any higher rate on the printed bags would apply to the entire shipment. In our opinion the record does not justify higher rates on printed than on unprinted bags.

Complainants in No. 12108 suggest a minimum carload weight of 48,000 pounds for newsprint. Complainants in the other cases object, because small cars are frequently furnished and also because purchasers are often unable to handle so large a quantity. Defendants suggest a minimum of 40,000 pounds for application in all instances except where the present minimum is greater. No valid objection has been made to this suggestion or to the proposed mixed-carload rule.

We approve the grouping of paper and paper articles here in issue, minimum carload weights, and mixed-carload rule set forth below:

*Grouping of paper and paper articles, in boxes, bundles, crates, or rolls (not printed or imprinted, unless so specified).*

Group 1:

Newsprint.

Wall paper, blank, unfinished.

Group 2:

Printing, other than newsprint.

Wrapping, other than cloth lined, oiled, waxed, grease proof, paraffined, or rosin glazed.

Wrappers.

Bags.

Bags, printed.

Blotting.

Cardboard.

Document, manilla.

Boxes or cartons, pulpboard or strawboard, plain or corrugated, knocked down.

Linings, ice-cream can.

Boxes, knocked down.

Binder board.

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## Group 3:

Writing, other than folded.

Toilet.

Toweling.

Towels.

Napkins.

Paper and paper articles, in boxes, bundles, crates, or rolls, viz, wrapping, oiled, cloth lined, paraffined, waxed, rosin glazed, or grease proof.

Paper tablets, not printed.

Wrappers, printed, exclusive of labels.

Bottle wrappers, plain, corrugated, or indented.

Order blanks, printed.

*Minimum carload weights.*

Group 1—40,000 pounds.

Group 2—40,000 pounds.

Group 3—36,000 pounds, except that the minimum on paper toweling, towels, napkins, and toilet paper shall be 24,000 pounds, subject to rule 34, consolidated classification.

*Mixed-carload rule.*

Articles listed in groups 1, 2, and 3 above may be shipped in mixed carloads subject to the following rule: The highest rate on any article in the car and also the highest minimum carload weight on any such article shall apply on the entire shipment.

There is difference of opinion as to which of the above-described groups of paper should be the basic group, and concerning the relationships of the rates on the two other groups to the basic rates. Complainants in No. 12108 produce more printing paper than newsprint<sup>1</sup> and propose to make the rates on printing paper the basic rates, the rates on newsprint to be 20 per cent lower and the rates on writing

<sup>1</sup> In 1914, the last year for which census reports are available, the country's paper production was 3,550,049 tons, divided, in percentages, newsprint 37, printing 26.1, wrapping 24.8, writing 5.5, tissue 3.3, hanging 2.7, blotting 0.4, and poster 0.2. In 1920 the newsprint production, according to Federal Trade Commission reports, was 1,511,968 tons.

The annual capacity of the Minnesota mills, including those at International Falls and Fort Frances, is 160,000 tons. In 1920 the two points named shipped to the territory covered by No. 11950 48,881 tons of newsprint paper, divided, by tons, Arkansas 3,361, Kansas 14,827, Louisiana (New Orleans) 5,545, Missouri 8,671 (7,543 to St. Louis and Kansas City), Nebraska 6,271, Oklahoma 8,386, and Texas 1,820.

The annual capacity of the mills at the Soo is 67,520 tons. In 1920 their product was shipped to Michigan, Ohio, Indiana, Kentucky, Illinois, Minnesota, Iowa, Missouri, Nebraska, Kansas, Oklahoma, Arkansas, Louisiana, Texas, and Colorado, and was about evenly divided between points east and west of the Indiana-Illinois state line. Less than 10 per cent of the tonnage to points west of that line went to the points on the Missouri River and beyond embraced in No. 11981.

The annual capacity of the mills of the Wisconsin Traffic Association, complainants in No. 12108, including some mills in Michigan, is 396,500 tons. In 1920 these mills shipped 472,256 tons of paper, divided, in percentages, newsprint 29.6, printing 30.1, wrapping 32.3, writing 7, and paper bags 1. Of this tonnage 69.9 per cent, or 325,867 tons, went to the territory of destination embraced in No. 12108, divided, by percentages: Wisconsin and upper Michigan 11.4, Illinois and adjacent Mississippi River points 42.5, Minnesota 3.4, Dakotas 0.6, Missouri River cities, Sioux City to Kansas City, 24.9, interior Iowa 4.2, Missouri 1.1, Kansas, Nebraska, Colorado, and Wyoming 2.3, Arkansas, Oklahoma, and western Louisiana 3.9, Texas 1.8, and Mississippi Valley 2.9.

paper to be 25 per cent higher. Otherwise stated, they propose rates on printing paper 80 per cent of those on writing paper, and rates on newsprint 80 per cent of those on printing paper. Defendants propose to fix the rates on newsprint and then to add differentials of 3.5 and 8.5 cents to make the rates on printing and writing paper, respectively.

Complainants' proposal is based largely on *Official Classification Rates on Paper*, 38 I. C. C., 120, where we approved a commodity rate of 20 cents on newsprint and the sixth-class rate of 25.3 cents on printing paper from producing points in New England and New York to Chicago over the so-called differential lines, the corresponding fifth-class rate applicable on writing paper at that time being 31.5 cents. The percentage relationships of these rates are the same as suggested by complainants. The 20-cent rate on newsprint found reasonable in that case, however, was a blanket rate applicable from a very extensive territory of origin in this country and in Canada, and rates on writing paper were not there in issue. It does not necessarily follow that these percentage relationships are appropriate or reasonable under the conditions here presented. As stated, the rates throughout the territory herein considered have been and are largely the same on paper of all kinds. In instances where the rates are not the same the differences are usually slight. The application of these percentages to the 75-cent rate on newsprint from the Fox River mills to Denver, Colo., hereinafter prescribed, would result in rates of 94 cents on printing paper and \$1.17 on writing paper. The rates to Texas common points would be 82 cents, \$1.025, and \$1.28, respectively. Such differences are not warranted by considerations of value, loading, or other conditions of transportation. We find that the rates on newsprint (group 1) should be the basic rates, and that the rates on printing and writing paper (groups 2 and 3) should not exceed 110 and 133½ per cent, respectively, of the newsprint rates.

The origin and destination territories covered by these complaints are largely the same as those considered in *Lake Superior Paper Co. v. Director General*, 61 I. C. C., 709, 64 I. C. C., 33, hereinafter called the *Lake Superior Case*. In that case we prescribed certain differential relationships between the rates on newsprint from the Soo, on the one hand, and from Minnesota, Wisconsin, and Michigan groups or producing points, on the other, to destinations in Wisconsin, Illinois, Minnesota, Iowa, Missouri, Arkansas, South Dakota, Nebraska, Kansas, Oklahoma, Texas, and Colorado to Shreveport and New Orleans, La., and to Memphis, Tenn. We described the Fox River group, comprising points on the Fox and Wisconsin rivers in eastern and central Wisconsin, as including Menasha, Nekoosa, Marinette,  
66 I. C. C.

Merrill, Neenah, Kimberly, Appleton, Combined Locks, Port Edwards, Grand Rapids, Stevens Point, and Rothschild, Wis.; the northern Wisconsin group, comprising points north and west of the Fox River group, as including Eau Claire, Ladysmith, Park Falls, Tomahawk, and Rhinelander, Wis., and Quinnesec, Mich.; and the Minnesota group, lying to the west of the northern Wisconsin group, as including Sartell, Little Falls, Brainerd, Grand Rapids, and Cloquet, Minn. It was also shown that the mills operated at International Falls and Fort Frances and at the Soo and the mills at Groos and Manistique in the upper peninsula of Michigan are not included within any group. The Fox River group was taken as the basic group and certain differential relationships were fixed for the other groups or producing points. We did not prescribe rates from any group, as only relationships were in issue; nor were relationships prescribed from Groos, Manistique, and Munising to any point, or from any of the groups or producing points to certain of the destinations and territories included in the present complaints.

Defendants suggest an origin group relationship different from that prescribed in the *Lake Superior Case*. They agree that the Fox River group should be the basic group, but propose to make the rates from the other groups differentials higher or lower, corresponding to the spreads in the zone-A sixth-class rates for the respective distances under the central territory class-rate scale. For example, they propose a rate of 18 cents from the Fox River group to Chicago, an average distance of 234 miles. The average distance from the northern Wisconsin group to Chicago is 313 miles. To the 18-cent rate they would add the difference between the sixth-class rates for 234 miles and 313 miles under the central territory scale to make the rate from the northern Wisconsin group.

The International Falls complainant objects to any differential relationship that would necessitate changes in rates from the other groups when rates from the basic group are changed; or that would require a complaint against the rates from the basic group to correct maladjustments of the rates from the other groups. It shows that rates from International Falls and Fort Frances have been and are published as specific rates and not in the form of differentials higher or lower than the rates from any other group.

It is clear, however, that the producing points under consideration are in most cases in active and in all cases in potential competition in the destination territory involved, and a relationship of rates is sought which will be free from undue preference or prejudice. We have been unable to discover any better way of meeting this issue than by the selection of one origin group as the basic group and the use of differentials. The record shows that in general the dif-

ferential relationships prescribed in the *Lake Superior Case* were proper, but it discloses necessity for certain modifications and extensions. For that reason the *Lake Superior Case* has been reopened for further consideration and the order entered in that case is rescinded by the order entered herein. In making a comprehensive readjustment of the rates attacked, we shall, therefore, fix reasonable maximum rates on newsprint from the Fox River group to representative destinations and apply the differentials from other groups or producing points and the percentage relationships on other kinds of paper herein prescribed. It is not intended, however, that these differentials shall remain fixed in amount in case of any subsequent increase or reduction in the basic rates, but that they shall at such time be increased or reduced by a corresponding percentage.

Some of the rates attacked we have reviewed in other proceedings. In *Michigan Paper Mills Traffic Asso. v. A., T. & S. F. Ry. Co.*; 59 I. C. C., 649, we found that the rates on printing paper and waxed wrapping paper from certain Michigan points to a number of destinations in northern Illinois were unduly prejudicial to the Michigan producers and unduly preferential of competing points in the Fox River group. Defendants corrected the situation by increasing the rates from the Fox River group to the Michigan basis, resulting in a rate of 21.5 cents on printing paper from the Fox River group to Evanston, Ill. The rate to Chicago was likewise increased to 21.5 cents in order to avoid a fourth section departure. The reasonableness of the rates so established we did not consider. In *Tribune Co. v. G. N. Ry. Co.*, 53 I. C. C., 745, the rate on newsprint from International Falls to Sioux City, Iowa, then the same as to Omaha, Nebr., was found not unreasonable, but to be unduly prejudicial to the extent that it exceeded a rate 3 cents lower than the rate to Omaha, or exceeded the contemporaneous rate to Des Moines, Iowa. In *Phoenix Printing Co. v. M., K. & T. Ry. Co.*, 31 I. C. C., 289, and *Adleta Paper Co. v. C. & N. W. Ry. Co.*, 31 I. C. C., 347, rates based on the ton-mile earnings to Joplin, Mo., were prescribed on newsprint and wrapping paper, respectively, from certain Wisconsin and Michigan mills to Muskogee, Okla. In *World Publishing Co. v. Director General*, 53 I. C. C., 491, the Joplin ton-mile basis was extended to Tulsa, Okla., on newsprint, wrapping, and toilet paper from certain Minnesota and Wisconsin points. It was there stated that the "relative basis per ton-mile can be applied to any rate 'contemporaneously maintained to Joplin' and need not be limited, as maxima, to those under the present rate to Joplin." Since the decision in that case the Joplin rates have been increased as authorized in general order No. 28 of the Director General of Railroads and by us on July 29, 1920.

Defendants contend, however, that the Joplin rate is, and for many years has been, subnormal. In *Gazette Publishing Co. v. B. F. & I. F. Ry. Co.*, 58 I. C. C., 503, rates on newsprint from International Falls and certain Wisconsin points to Little Rock, Ark., were found not unreasonable, notwithstanding complainant's contention respecting the greater progression of increase beyond St. Louis than to St. Louis. In *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.*, 51 I. C. C., 505, complainant asked us to extend the Kansas City ton-mile basis to Wichita on newsprint paper from International Falls, Grand Rapids, Little Falls, and Sartell, Minn., and Chicago, Ill., and cited the *Phoenix Printing Company Case*, *supra*. We denied the request and prescribed rates on a somewhat higher basis, upon the ground that conditions justified relatively lower rates east than west of the Missouri River, as shown in *State of Kansas v. A., T. & S. F. Ry. Co.*, 27 I. C. C., 673.

Various suggestions have been offered as to the proper manner of readjusting the rates attacked. Complainants' suggestions in respect of rates to the southwest are based largely on an extension of the Joplin ton-mile basis. The International Falls complainant proposes a division of the territory south and west of the Missouri River and St. Louis into zones, the width of each of the first three zones being 100 miles, and of the others, 150, 250, and 300 miles, respectively. The last two zones would include most of the state of Texas. Joplin and Muskogee are in about the center of the second and third zones, respectively. In the cases cited the extension of the Joplin ton-mile basis made the rate to Muskogee 4 cents higher than to Joplin. Taking into consideration the general increases authorized by us on July 29, 1920, this complainant proposes to add 5.5 cents for each zone south of the one in which Muskogee is situated. The greater width of the more distant zones would result in ton-mile earnings decreasing with distance. Modifications of the plan are suggested to take care of rate-making influences such as the Missouri and Mississippi River adjustments, recognized groupings of destinations like the Beaumont-Houston group, and the fourth section.

The Soo complainant proposes no specific rates or basis of rates, but presents elaborate maps and rate statements which stress the greater progression in rates and ton-mile earnings to points south and west of the Missouri River than to the Missouri River.

The Fox River complainant suggests specific rates to the more important destinations, which are said to be based on the transportation and commercial conditions affecting particular rates rather than on any arbitrary general basis. It contends that the present war-time rates should now be reduced to a point which will permit the traffic to move more freely under existing conditions of industrial depres-

sion. Its suggested rates on newsprint from the Fox River group include 12 cents to Chicago and 24 cents to the Missouri River, in lieu of the present rates of 17 and 34 cents. To points beyond the Missouri River in Nebraska and Kansas it proposes rates which would yield somewhat greater ton-mile earnings than the rates to the Missouri River. To points in Oklahoma it proposes rates based on the ton-mile earnings to Joplin under a proposed rate of 38 cents. The present rate to Joplin is 52.5 cents. To points in Arkansas and Texas its proposed rates are on a somewhat higher relative level than the proposed rate to Joplin.

One group of defendants, hereinafter called the western trunk lines, submitted evidence regarding the rates to Chicago and points west thereof to the Missouri River and to South Dakota and Nebraska. Another group, hereinafter called the southwestern lines, dealt with the rates to the Missouri River and the territory south and west thereof in Kansas, Colorado, Missouri, Oklahoma, Arkansas, Louisiana, and Texas.

The readjustment suggested by the western trunk lines is based largely on proposed rates on newsprint from the Fox River group to Chicago, St. Louis, and the Missouri River cities, which are 1 cent higher than the present rates of 17, 27, and 34 cents, respectively. The proposed rate to Chicago was determined by deducting from the rate of 21.5 cents on printing paper, established from certain Fox River points to Chicago following the *Michigan Paper Mills Traffic Asso. Case, supra*, the fixed differential of 3.5 cents proposed by defendants for printing paper over newsprint. The proposed rates from the Fox River and other groups to other points in western trunk line territory are likewise higher in many instances than the present rates. The proposed rates on newsprint to certain points are lower than the present rates, but the points to which increased rates are proposed afford a market for the greater part of complainants' output. Other kinds of paper would be subject to still greater increases under the grouping of paper and paper products hereinbefore approved.

The southwestern lines contend that the rate from the Fox River group to the Missouri River should be increased to 40 cents. The basis stated for that contention is as follows: Paper articles are rated fifth class within western territory. The fifth-class rate of 46 cents to Kansas City is only 34 per cent of the first-class rate of \$1.35 to Kansas City, but should be a higher percentage. Between New York and Chicago the fifth-class rate is 40 per cent of the first-class rate. Therefore 40 per cent of the first-class rate to Kansas City, or 54 cents, would be a reasonable fifth-class rate to Kansas City, and the fifth-class rate should apply on writing paper. The



present commodity rate of 34 cents on newsprint is about 73½ per cent of the present fifth-class rate of 46 cents. Therefore 73½ per cent of the suggested reasonable fifth-class rate of 54 cents, amounting to 40 cents, would be reasonable on newsprint. These defendants suggest that rates on newsprint to other points be made as follows: To Tulsa, Okla., Emporia, Concordia, Great Bend, and Dodge City, Kans., Hot Springs, Eldorado, and Texarkana, Ark., Monroe, Shreveport, and Alexandria, La., and Texas common points, 73½ per cent of fifth class; to Joplin, Mo., Fort Scott, Coffeyville, Wichita, Hutchinson, Salina, and Arkansas City, Kans., Oklahoma City and Ardmore, Okla., rates yielding the same ton-mile earnings, 16.23 mills, as the proposed rate to Tulsa; to Muskogee, Okla., and Fort Smith, Ark., the same rate as to Tulsa; to Springfield, Mo., the same rate as to Fort Scott; to McAlester, Guthrie, and Enid, Okla., the same rate as to Oklahoma City; and to Jonesboro, Forrest City, and Little Rock, Ark., the same rate as to Fort Smith, because of fourth section requirements. They propose no change in the rates to Colorado common points.

The readjustment proposed by the southwestern lines conforms substantially with the recommendations made in 1919 by two of the carrier members of a committee, consisting of three carrier and three shipper representatives, appointed by the United States Railroad Administration to suggest an appropriate general revision of southwestern paper rates, following the *World Publishing Company Case, supra*. It will be observed that this basis rests upon the premise that the fifth-class rates to Kansas City and Joplin are too low, and that the fifth-class rate to Tulsa more nearly approaches a normal basis and should govern the rates to points in surrounding territory. On the other hand, one of the complainants would base the readjustment on existing Joplin rates, another on proposed reduced Joplin rates, while the third makes no specific suggestions, but relies upon the greater progression in rates and ton-mile earnings beyond the Missouri River to show that the present rates are unreasonable.

The record includes comparisons of the tonnage densities of lines to and from the Missouri River, of rates on paper between the points under consideration with rates on paper between other points, and with rates on iron and steel articles, canned goods, lumber, and other commodities. The relationships of the rates on paper and other articles to the first-class and fifth-class rates are also shown.

Manifestly the rate on newsprint from the Fox River group to Chicago is a very important factor to be considered in any general readjustment of the rates attacked. Defendants assert that the rate of 10 cents in effect prior to the increases under general order No. 28 was made to meet the competition of paper from the east

moving under a rate of 18 cents. Evidence offered by the Fox River complainant, however, indicates that the former rate antedated the latter. The increases authorized by general order No. 28 and by us on July 29, 1920, resulted in the present rate of 17 cents. The 18-cent rate from the east has in the meantime been increased to 43 cents. The present rates from the Fox River group and the east to Chicago represent increases of 70 and 139 per cent, respectively, over the former rates. Interveners representing eastern manufacturers of paper protest against any reduction in the rate from the Fox River group to Chicago, because of its alleged relationship to their rate, and of the effect which they anticipate a reduction would have upon the general fabric of paper rates in official territory. As already stated, we approved sixth class on printing paper and commodity rates approximately 80 per cent of sixth class on newsprint in *Official Classification Rates on Paper, supra*. The Michigan Paper Mills Traffic Association, intervener, asserts that the sixth-class basis has not been uniformly or even generally applied following that decision, and that Michigan and Ohio mills are the only ones that uniformly pay sixth-class rates on printing paper to all points in official territory. This intervener agrees with the Fox River complainants that the rates on paper and paper articles from the Fox River mills, as well as from its own members' mills, to the territory covered by these complaints are too high. We are not impressed with the defendants' contention that the present rate on newsprint from the Fox River group to Chicago is too low or that the present rates on printing paper from certain Michigan points to Chicago afford a proper standard for readjusting the rates from the Fox River group. Nor, on the other hand, do we think that the present rate is shown to be unreasonable.

Considerable evidence was submitted in regard to the rates to the Missouri River cities. Defendants assert that these rates are low, due to the former existence of mills manufacturing certain kinds of paper and paper articles at and near Kansas City, and also to carrier competition. It appears that prior to federal control the carriers had under consideration a proposal, concurred in by some of the paper manufacturers, for an increase of 2 cents in paper rates from Wisconsin and Minnesota mills to the Missouri River. The rate was then 20 cents from the Fox River group as compared with the present rate of 34 cents. Generally speaking, the Missouri River cities have equal rates from all points of origin concerned, except that the rates from the Minnesota group and International Falls are less to Sioux City than to the lower crossings. Considering the relative distances and other facts of record, we think that the rates to Sioux City and Omaha

from all points of origin should be slightly lower than to **Kansas City and St. Joseph.**

The rates to Joplin are also the subject of much discussion. Defendants regard them as subnormal. Complainants contend that these rates are unreasonable and call attention to the facts that about a year previous to our decisions in which we extended the Joplin ton-mile basis to Okmulgee and Tulsa, the Joplin rate was increased by 5 cents, and that no effort has since been made to increase its level in relation to other rates.

It would be easier to give proper weight to the various comparisons of record if only the one rate which now generally applies on all kinds of paper from each producing group were being considered, instead of the reasonable rates to be applied after a regrouping of paper and paper articles into three classes, with different rates for each class. Such a regrouping will necessarily result in increases and reductions, according to the class and the level of the rate at each point under the present adjustment. The record demonstrates that certain of the rates, particularly those to points beyond the Missouri River, are too high; that others, affected by local influences, are somewhat low; and that there should be a general readjustment which will better accord with the average distances from the respective groups and with the transportation characteristics of the different kinds of paper and paper articles. Many of the present rates have been made without regard to distance, and there is no consistency between the rates from the various groups and producing points. In many instances the rates from all points in a group are not the same, and in some instances the rates on newsprint are higher than on printing or writing paper. The rates hereinafter prescribed represent substantial reductions to most points west and southwest of the Missouri River cities. These reductions are clearly justified by the facts of record, particularly by comparisons with rates to certain points in that territory which may be accepted as reasonable, inasmuch as they are either based on rates voluntarily established by the carriers or approved by us in other cases. To points on and east of the Missouri and Mississippi rivers, increases as well as reductions in the rates on newsprint will result from our findings. Considering the present distribution of the traffic and the regrouping of paper and paper articles which will accompany the changes in rates, it seems probable that the total revenues on the traffic will not be greatly reduced. The readjustment prescribed will unquestionably provide more just and reasonable relationships as between the various points of origin and destination. It is prescribed without prejudice to any change in the general level of the rates on paper and paper articles which may appear reasonable

as the result of the evidence in the general rate investigation, No. 13293.

Upon consideration of all the facts, we find that the interstate rates attacked, applicable on newsprint, in carloads, from the Fox River group to the typical destinations named are, and for the future will be, unreasonable to the extent that they exceed or may exceed the rates set forth in the appendix hereto; and that the interstate rates on printing paper and on writing paper, in carloads, and on paper or paper articles grouped with printing paper or writing paper, as hereinbefore approved, from the Fox River group to the same destinations are, and for the future will be, unreasonable, to the extent that they exceed or may exceed by more than 10 and 33½ per cent, respectively, the corresponding rates on newsprint contemporaneously in effect between the same points. We further find that the respective interstate rates on newsprint, in carloads, from the northern Wisconsin and Minnesota groups, International Falls, Minn., Groos, Manistique, and Munising, Mich., and from Fort Frances and Sault Ste. Marie, Ontario, for that portion of the transportation within the United States, to the same destinations, are, and for the future will be, unduly prejudicial to or unduly preferential of shippers thereunder to the extent that they are or may be greater or less than rates made by applying to the corresponding rates contemporaneously in effect from the Fox River group, differentials which bear to such corresponding contemporaneous rates the same percentage relation that the differentials set forth in the appendix hereto bear to the corresponding rates from the Fox River group set forth in said appendix; and that the respective interstate rates on printing paper and on writing paper, in carloads, and on paper or paper articles grouped with printing paper or with writing paper, as hereinbefore approved, from the above-named origin groups or points to the same destinations are, and for the future will be, unduly prejudicial to or unduly preferential of shippers thereunder to the extent that they are or may be greater or less than rates made by increasing the corresponding rates on newsprint, in carloads, contemporaneously in effect between the same points by the same percentages that the corresponding rates from the Fox River group exceed the rates on newsprint to said points.

The figures in the appendix shown in *italics* represent differentials under the Fox River group. Rates and differentials to points included in the complaints but not specifically named in the appendix should be established in harmony with those herein prescribed. The basic rates prescribed from the Fox River group are maximum reasonable rates, and lower rates may be established by defendants if

they so desire, as, for example, for the purpose of meeting foreign or domestic competition at New Orleans, if such reductions are otherwise lawful.

Upon this record and as the issues are presented, we can not prescribe rates and relationships on intrastate traffic. The present interstate rates to Milwaukee on newsprint from all points of origin named in the appendix appear to be reasonable and fairly aligned with each other and with the present intrastate rate of 13 cents from the Fox River group, except that the rates from the Minnesota group, Groos, Manistique, and Munising should not exceed by more than 11, 3, 4, and 5 cents, respectively, the rates contemporaneously in effect from the Fox River group to Milwaukee. Defendants will be expected to revise these rates and the related rates on group-2 and group-3 articles accordingly. The interstate rates prescribed on newsprint to St. Paul, Duluth, and Albert Lea bear a fair relation to the present intrastate rates from most points in the Minnesota group. Defendants will be required to maintain the differential relationship prescribed on traffic from International Falls to St. Paul, Duluth, and Albert Lea over interstate routes and on traffic from Fort Frances, Ontario, to the same points for that portion of the transportation within the United States.

The three complaints filed by consumers of paper and paper articles at Wichita, Oklahoma City, and Okmulgee, Nos. 11836, 11846, and Sub-No. 1, and 11864, involve certain rates that are not included in the preceding findings, viz, rates on newsprint and certain other kinds of paper and paper articles from Chicago, Ill., St. Louis, Mo., and Alexandria, Ind., to Wichita, and from these points and Sturgeon Falls, Ontario, to Oklahoma City and Okmulgee; on wrapping and toilet paper and paper towels from Kansas City, Mo., to Oklahoma City; on strawboard and chip board from Hutchinson, Kans., to Oklahoma City; on paper tablets from St. Joseph, Mo., to Oklahoma City; and on building and roofing paper from Chicago, St. Louis, and points taking the same or related rates to Oklahoma City. The record contains many comparisons of the rates attacked with those on the same and other commodities which need not be detailed.

No newsprint is produced at Chicago or St. Louis, but the rates therefrom are used as components of combination rates on shipments from certain points beyond those gateways. The present rates to Wichita, Oklahoma City, and Okmulgee are the same from Chicago as from the Fox River group, and from St. Louis are 9 cents lower. We find that the rates on newsprint, in carloads, from Chicago and St. Louis, respectively, to Wichita, Oklahoma City, and Okmulgee

are, and for the future will be, unreasonable to the extent that the rates from Chicago exceed the maximum rates hereinbefore found reasonable from the Fox River group to the same points, and to the extent that the rates from St. Louis exceed rates which are 9 cents less than the contemporaneous rates from Chicago. The corresponding rates attacked on other kinds of paper or paper articles should be determined in accordance with the relationships to the rates on newsprint hereinbefore approved. The rates from Sturgeon Falls, Detroit, and Petoskey, Mich., Alexandria, and other points of origin named in these complaints base on Chicago or St. Louis and should be correspondingly revised.

The present rate on wrapping paper from Kansas City, Mo., to Oklahoma City, 343 miles, is 76.5 cents, as compared with the maximum rates of 68 cents from the Fox River group and 58.5 cents from St. Louis, hereinbefore prescribed. It is 8 cents less than the present rate from St. Louis. The present rate on toilet paper and paper towels from Kansas City to Oklahoma City is 77.5 cents, and on paper tablets from St. Joseph, Mo., to Oklahoma City, 81 cents. Considering the numerous comparisons of record and the relationships hereinbefore prescribed, we find that these rates are, and for the future will be, unreasonable to the extent that they exceed or may exceed 49 cents on wrapping paper and 59.5 cents on toilet paper and paper towels from Kansas City and 59.5 cents on paper tablets from St. Joseph.

The present rate on strawboard and chip board, in carloads, from Hutchinson, Kans., to Oklahoma City, 231 miles, is 61 cents, as compared with rates of 19 cents to Kansas City, 219 miles; 30.5 cents to Joplin, 268 miles; and 34.5 cents to St. Louis, 496 miles. These rates yield 52.8, 17.4, 22.8, and 13.9 mills per ton-mile, respectively. We find that the rate on strawboard and chip board, in carloads, from Hutchinson to Oklahoma City is, and for the future will be, unreasonable to the extent that it exceeds or may exceed the rate contemporaneously in effect from Hutchinson to Joplin.

The present rates on building and roofing paper are 79.5 cents from St. Louis and 83 cents from Chicago to Oklahoma City. The rates from Marseilles, Ill., Kalamazoo, Port Huron, and Detroit, Mich., and other points of origin concerned are based on arbitraries over St. Louis subject to the combinations of locals as maxima. Exhibits show that the rates on building and roofing paper are, in general, slightly lower than on newsprint. We find that the rates on building and roofing paper from St. Louis and Chicago to Oklahoma City are, and for the future will be, unreasonable to the extent that they exceed or may exceed 95 per cent of the rates on newsprint

hereinbefore prescribed, and that the rates from Marseilles, Detroit, Kalamazoo, Port Huron, and other points of origin concerned are, and for the future will be, unreasonable to the extent that the factors from St. Louis to Oklahoma City exceed or may exceed the rate from St. Louis to Oklahoma City hereinbefore found reasonable.

We further find that during the respective periods between June 25, 1918, and August 24, 1920, and prior to June 25, 1918, the rates attacked in Nos. 11836, 11846 and Sub-No. 1, and 11864, were unreasonable to the extent that they exceeded rates made by deducting from the rates hereinbefore prescribed as reasonable for the future, the percentages of increase authorized by us on July 29, 1920, and by the Director General in general order No. 28.

We further find that complainants in Nos. 11836, 11846 and Sub-No. 1, and No. 11864 made shipments as alleged and paid and bore the charges thereon; and that, subject to the qualifications hereinafter stated, they have been damaged to the extent that the charges paid exceeded those which would have accrued at the rates herein found reasonable and are entitled to reparation, with interest. These complainants should comply with rule V of the Rules of Practice.

The shipments made by the Oklahoma City complainants include certain shipments of paper bags and writing paper upon which they did not pay and bear the transportation charges; shipments of paper bags consigned to the Russell Jobbers Mills prior to January 1, 1919, some of which were in club cars, on which the freight was prorated among the receivers of the freight, which can not be separated from other shipments to this complainant; and shipments of one kind of building paper from Detroit to the Oklahoma Sash & Door Company prior to 1920 on which the consignor paid and bore the transportation charges. The claims of the Oklahoma City and Okmulgee complainants also include certain shipments upon which the cause of action accrued prior to the statutory period of two years, exclusive of federal control. Those of the Wichita complainants include shipments made prior to September 30, 1916, the date named in their petition, and shipments included in *Wichita Traffic Bureau v. A., T. & S. F. Ry. Co.*, *supra*, upon which reparation was awarded in that case. These complainants are not entitled to reparation herein on any of the shipments included in the foregoing descriptions.

An appropriate order will be entered.

## APPENDIX.

To—	Fox River group rate.	Northern Wisconsin group differential.	Sault Ste. Marie differential.	Minnesota group differential.	International Falls and Fort Frances differential.	Groos differential.	Manistique differential.	Munising differential.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Chicago, Ill.....	17	3	8.5	8.5	10	3	4	5
Davenport, Iowa.....	20	2	8.5	5	7	3	4	5
Mason City, Iowa.....	23	0	8.5	1	4	4	5	5
Cedar Rapids, Iowa..	23	2	8.5	2	4	4	5	5
Des Moines, Iowa....	28	0	8.5	0	4	4	5	5
Sioux City, Iowa.....	32	1.5	7	4	0	2	3	3
Sioux Falls, S. Dak..	32	1.5	7	6	0	2	3	3
Watertown, S. Dak..	37	1.5	7	6	1	2	3	3
Aberdeen, S. Dak....	42	1.5	7	6	1	2	3	3
Mitchell, S. Dak.....	42	1.5	7	5	1	2	3	3
Pierre, S. Dak.....	52	1.5	7	5	1	2	3	3
Grand Forks, N. Dak.	46	5	4	21	21	1	3	3
Norfolk, Nebr.....	40	1.5	7	4	0	2	3	3
Omaha, Nebr.....	32	0	7	1.5	3	3	4	4
Lincoln, Nebr.....	37	0	7	1.5	3	3	4	4
Hastings, Nebr.....	44	0	7	1.5	3	3	4	4
Denver, Colo.....	75	0	6	1	2	2	3	3
Kansas City, Mo.....	34	1.5	7	0	4	3	4	4
Topeka, Kans.....	41	1.5	6	0	3	3	4	4
Joplin, Mo.....	50	1.5	6	0	3	3	4	4
Salina, Kans.....	50	1.5	6	0	3	3	4	4
Wichita, Kans.....	52.5	1.5	6	0	3	3	4	4
Tulsa, Okla.....	57	1.5	6	0	3	2	3	3
Muskogee, Okla.....	57	1.5	6	0	3	2	3	3
Okmulgee, Okla.....	60	1.5	6	0	3	2	3	3
Oklahoma City, Okla.	62	1.5	6	0	3	2	3	3
Texas common points	82	1	5	1	5	2	3	3
Galveston, Tex.....	82	1	5	1	5	2	3	3
El Paso, Tex.....	100	0	5	0	3	3	4	4
Peoria, Ill.....	23	2	8	4	8	3	4	5
St. Louis, Mo.....	25	2	7	4	8	2	3	4
Moberly, Mo.....	28	2	7	1	5	2	3	4
Cairo, Ill.....	33	2	6	5	7	2	3	3
Memphis, Tenn.....	42.5	1.5	6	5	7	2	3	3
Little Rock, Ark.....	54	1.5	6	5	7	2	3	3
Jackson, Miss.....	54	1.5	6	5	7	2	3	3
Alexandria, La.....	60	1.5	5	4.5	6	2	3	3
New Orleans, La.....	60	1.5	5	4.5	6	2	3	3

To—	Neenah rate.	Ne-koosa differential.	Eau Claire-Lady-smith differential.	Park Falls differential.	Toma-hawk-Rhine-lander differential.	Quin-nesc differential.	Groos differential.	Manis-tique differential.	Munis-ing differential.	Sault Ste Marie differential.	Inter-national Falls-Fort Frances differential.
St. Paul, Minn.....	19	3	7	4	3	0	3	3	3	6	0
Duluth, Minn.....	22	(1)	8.5	6.5	5	0	0	0	0	3.5	6.5
Albert Lea, Minn.....	22.5	(1)	0	(*)	(*)	(*)	2.5	3	3	8	2.5

<sup>1</sup> Grouped with Neenah, Wis.<sup>2</sup> Grouped with Eau Claire, Wis.



No. 12144.

MIDLAND COAL COMPANY ET AL.

v.

MIDLAND VALLEY RAILROAD COMPANY ET AL.

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*Submitted July 11, 1921. Decided February 25, 1922.*

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Rates on coal, in carloads, from Williams, Okla., to Kansas City, Mo., found unreasonable. Reparation awarded.

*W. R. Greene* for complainants.

No appearance for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are the Cameron Coal Company, a corporation, and H. C. Kellogg and C. H. Markham, copartners doing business under the firm name of Midland Coal Company. The latter are sales agents for the Cameron Coal Company, which mines coal at Williams, Okla. By complaint filed January 21, 1921, they allege that the rates charged on two carloads of coal shipped in December, 1916, and one in November, 1917, from Williams to Kansas City, Mo., were unjust, unreasonable, and in violation of the long-and-short-haul provision of section 4 of the interstate commerce act. We are asked to award reparation and to establish a reasonable rate for the future. Rates will be stated in amounts per ton of 2,000 pounds. The claim was presented to us informally on November 29, 1918.

Williams is a local point on the Midland Valley. The shipments made in 1916 moved over that line to Muskogee, Okla., Missouri, Oklahoma & Gulf to Baxter, Kans., and St. Louis-San Francisco, hereinafter called the Frisco, to Kansas City, 356.3 miles. The other shipment moved over the same route, except that it was interchanged with the Frisco at Joplin, Mo., instead of Baxter. This junction was not specifically named in the routing instructions. No joint rates were in effect. The applicable combination rates and other details of the shipments follow:

66 I. C. C.

Date of shipment.	Weight in pounds.	Rate applicable.	Rate charged.	Aggregate transportation charges collected.
December 12, 1916.....	102,500	<sup>1</sup> \$6.15	\$5.75	\$294.69
December 18, 1916.....	60,000	<sup>1</sup> 6.15	6.25	187.50
November 12, 1917.....	84,500	<sup>2</sup> 5.55	5.00	211.25

<sup>1</sup>\$0.95 to Muskogee, \$3 Muskogee to Baxter, and \$2.20 beyond.

<sup>2</sup>\$1.10 to Muskogee, \$2.10 Muskogee to Joplin, and \$2.35 beyond.

In December, 1916, a joint rate of \$2.10 was applicable from Williams to Kansas City over other routes maintained by the Midland Valley and certain carriers not here defendant. The carriers which participated in the movement of complainants' shipments maintained at that time a joint rate of \$2.10 to the same destination from mines in Arkansas on the Midland Valley, and on July 20, 1917, increased it to \$2.25. This rate applied through Williams over the route of movement first described. The resulting departure from the long-and-short-haul provisions of the fourth section was not protected by appropriate application. On October 20, 1919, a joint rate of \$2.70 from Williams to Kansas City was established over this route, the same as that then in effect from the Arkansas mines, thus bringing the rates into conformity with the requirements of the fourth section. A subsequent departure through error in tariff publication was corrected, effective April 27, 1921.

Defendants did not appear at the hearing. The Midland Valley and Frisco, on the informal docket, expressed willingness to award reparation to the basis of the rates contemporaneously in effect from the Arkansas mines. The property of the Missouri, Oklahoma & Gulf, not a defendant here, was sold under foreclosure, and the purchaser, the Kansas, Oklahoma & Gulf, defendant herein, declined to join, stating that the final decree had required the filing of all claims in the receivership proceedings within 90 days after confirmation of the sale, a period which expired on November 12, 1919.

The Midland Coal Company appears in the billing as both consignor and consignee of one of the shipments, but the record shows that it acted as agent for the Cameron Coal Company and that the latter bore the freight charges.

We find that the rate applicable on the shipments made in 1916 was unreasonable to the extent that it exceeded \$2.10; that the rate applicable on the shipment made in 1917 was unreasonable to the extent that it exceeded \$2.25; that complainant Cameron Coal Company made the shipments described and bore the charges thereon; that it has been damaged in the amount of the difference between

the charges paid and those which would have accrued at the rates herein found to have been reasonable; and that it is entitled to reparation against the defendants, other than the Kansas, Oklahoma & Gulf, in the sum of \$427.75, with interest, which takes into account the outstanding undercharges and overcharges.

The \$2.25 rate, as since increased under general order No. 28 of the Director General of Railroads and Ex Parte 74, is now in effect over the natural route of movement via Baxter, and no order for the future is necessary.

An order awarding reparation will be entered.

66 I. C. C.

No. 11906.

HYRE-PRICE LIVE STOCK COMMISSION COMPANY  
ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY  
OF TEXAS ET AL.

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*Submitted October 6, 1921. Decided February 25, 1922.*

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Reparation on carload shipments of live stock from Gould and Hollis, Okla., and from Dodsonville and Wellington, Tex., to Wichita, Kans., denied, and complaint dismissed.

*Rogers McCray* for complainants.*J. J. Lane* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, copartnerships engaged in the live-stock business at Wichita, Kans., by complaint seasonably filed, allege that the rates charged on 11 carloads of cattle, shipped from points in Oklahoma and Texas to Wichita in February and March, 1914, were unjust and unreasonable; and, as agents for the individual shippers at the respective points of origin, seek reparation in their behalf. Rates will be stated in cents per 100 pounds.

Pertinent facts concerning the shipments appear in the following table:

Shipper.	Date of shipment.	Point of origin.	Weight.	Rate applied.	Charges.
			<i>Pounds.</i>	<i>Cents.</i>	
J. H. Pigford.....	Feb. 28, 1914	Hollis, Okla.....	22,000	129	\$63.80
J. R. Beal.....	do.	do.	22,000	129	63.80
Do.....	do.	do.	22,000	129	63.80
Do.....	do.	do.	22,000	129	63.80
C. E. Duncan.....	do.	Gould, Okla.....	24,150	128	67.60
J. R. Moran.....	do.	do.	22,000	128	61.60
D. Turner.....	Feb. 10, 1914	Wellington, Tex.....	22,000	131	68.20
J. D. Thomas.....	do.	do.	22,990	131	71.25
Do.....	Mar. 14, 1914	Dodsonville, Tex.....	22,000	129.5	64.94
Do.....	do.	do.	22,000	129.5	64.94
A. O. Sweet.....	Mar. 22, 1914	do.	22,000	129.5	64.90

<sup>1</sup>Routing, W. F. & N. W. to Altus, Okla., and K. C., M. & O. beyond.

<sup>2</sup>Routing, M., K. & T. of Tex.; W. F. & N. W. to Altus; K. C., M. & O. beyond.

66 I. C. C.

The points of origin are on the Wellington branch of the Missouri, Kansas & Texas lines west of Altus and from 27 to 57 miles distant from that junction. Wichita is on the Kansas City, Mexico & Orient 258 miles northeast of Altus.

In *Investigation of Alleged Unreasonable Rates on Meats*, 22 I. C. C., 160, decided December 11, 1911, we suggested a distance scale of rates for the transportation of live stock, in carloads, from points in Oklahoma and Texas to Wichita. This scale named rates of 22, 22.5, 23, and 23.5 cents for 285, 292, 303, and 315 miles, respectively, the distances from Gould, Hollis, Dodsonville, and Wellington to Wichita, plus 2.5 cents for a two-line haul. In a supplemental report, 23 I. C. C., 656, we found that in no case for distances under 500 miles should more than one addition of the 2.5 cents be made on account of the hauls of additional lines. In another supplemental report, 28 I. C. C., 332, we said that shippers were entitled to reparation from the date of promulgation of the original report. It was not until April 24, 1914, that rates of 24.5 and 25 cents were established to Wichita from Gould and Hollis, and not until August 9, 1915, that rates of 25.5 and 26 cents were established from Dodsonville and Wellington. It is to the basis of these rates that reparation is sought.

The whereabouts of D. Turner and J. R. Beal are unknown. J. H. Pigford is deceased. The claim is not listed as an asset of his estate, and his administrator declines to take cognizance of it. The shipment of March 22 was consigned by A. O. Sweet and O. C. Sweet to Thompson & Mann, who are not parties to the complaint. Since the hearing C. E. Duncan, J. R. Moran, and J. D. Thomas have filed request for dismissal of the complaint. Complainants' agency to make claim for reparation has not been sufficiently established of record. Reparation is denied and the complaint will be dismissed.

66 I. C. C.

No. 11955.

ALBERS BROS. MILLING COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted August 1, 1921. Decided February 25, 1922.*

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Complainant not shown to have been damaged by alleged unjustly discriminatory and unduly prejudicial rates charged on carload shipments of grain and grain products between Oakland, Calif., and points in California. Complaint dismissed.

*George D. Squires, Sullivan & Sullivan, and Theo J. Roche* for complainant.

*Elmer Westlake, Fred H. Wood, James R. Bell, C. W. Durbrow,* and *Frank B. Austin* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, operating a mill at Oakland, Calif., alleges that the rates charged during federal control on numerous intrastate carload shipments of grain and grain products to and from Oakland, from and to points on the lines of the Southern Pacific within the state of California, were unjust, unreasonable, unjustly discriminatory, and unduly prejudicial in so far as they exceeded rates on like traffic to and from South Vallejo, Calif. Reparation is claimed. No evidence was presented to sustain the allegation of unreasonableness and complainant relies solely upon the issues of unjust discrimination and undue prejudice. Except under circumstances not here presented, we are without jurisdiction to prescribe an adjustment of intrastate rates for the future. This is primarily a question for determination by the Railroad Commission of California and is now before that tribunal.

Complainant's mill is located and has wharfage facilities at Oakland Mole, about 2 miles from the Oakland yards of the Southern Pacific, with which it is connected by spur tracks. Oakland is about 26 miles south of Port Costa, Calif., where the Southern Pacific operates a car ferry across Carquinez Straits to Benicia, Calif. South

Vallejo is west of Port Costa on the opposite side of Carquinez Straits and at the extremity of a branch line of the Southern Pacific extending from Napa Junction, Calif. The rail movement between Port Costa and South Vallejo is over a roundabout route through Benicia, Suisun, and Napa Junction, 37.5 miles. Complainant's competitor, the Sperry Flour Company, has a mill at South Vallejo which is served by the Southern Pacific. It also has wharf facilities at that point.

Complainant manufactures various grain products, cleans and stores grain, and conducts a general grain business. The Sperry Flour Company also manufactures grain products and sells grain. Some of the products of the two mills are identical and others are sufficiently similar to be more or less competitive. Both buy and sell at some common points.

Complainant asserts that it encountered competition from the Sperry Flour Company, but its evidence as to the extent of such competition is indefinite and inconclusive. Its sales manager did not think that the two companies competed in the San Joaquin and Sacramento valleys. Complainant's prices were not always governed by the prices of the South Vallejo mill. It did not meet the prices of its competitor on some of the shipments on which reparation is asked and such shipments can not be segregated from those on which it had to shrink its profits in order to make the sale.

We find that complainant has failed to prove with sufficient particularity that it was damaged by reason of any unjust discrimination or undue prejudice that may have existed during federal control. It is therefore unnecessary in this case to determine whether or not unjust discrimination or undue prejudice existed. The complaint will be dismissed.

66 I. C. C.

No. 12107.

FERD. BRENNER LUMBER COMPANY, INCORPORATED,  
v.  
DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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*Submitted June 30, 1921. Decided February 25, 1922.*

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Rates charged on lumber, in carloads, from Alexandria, La., to points in California, Washington, Oregon, and British Columbia, found to have been applicable. Tariff offering lower basis of rates found to have violated section 6 of the act. Reparation awarded.

*J. H. Townshend and C. A. New* for complainant.

*F. E. Andrews, George Thompson, Robert Thompson, and L. M. Hogsett* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant, a corporation, manufactures lumber at Alexandria, La. By complaint seasonably filed it alleges that the rates charged on 19 carloads of hardwood lumber shipped in April, May, June, and August, 1918, from Alexandria to points in California, Washington, Oregon, and British Columbia, were unreasonable and in violation of section 6 of the act. Reparation is asked.

The lumber comprising the shipments was manufactured at Alexandria from logs shipped over the Texas & Pacific from points in Louisiana between November 8, 1917, and February 27, 1918, inclusive. The lumber also moved outward over the Texas & Pacific. The question for determination is whether, under the provisions of the respective tariffs naming the log rates to and the lumber rates from Alexandria, the rates applicable on the lumber were those in effect when the shipments of logs originated or the higher rates in effect when the lumber was forwarded from Alexandria. Charges were collected on the latter basis. The measure of the rates assessed is not in issue.

66 I. C. C.



Texas & Pacific tariff I. C. C. 2014, under which the logs moved inbound, contained the following provisions governing transit:

ITEM NO. 43½-F (Cancels Item No. 43½-E)

REFUND, RESHIPMENT AND RATE TO APPLY FROM TRANSIT POINT.

When the Products, as described in Item No. 43½-E, which must equal 33½ per cent (See exception below) on the weight of the Rough Material into the transit point, are shipped out of the transit point via the Texas & Pacific to Louisiana points or to Interstate points to which through rates are published in tariffs lawfully on file with the Interstate Commerce Commission, the charges into transit point will be refunded to basis of weight of Rough Material into transit point at rate shown in Item No. 44-D, or re-issues. The rate to apply on the Products moving out of the transit point, under this Tariff will be that in effect from the transit point to destination on date of shipment from point of origin of the Rough Material.

Complainant complied with the requirements of this rule in making the shipments of lumber, and refund on the logs was made as provided therein. The rates charged on the lumber were those published in agent Countiss' transcontinental tariffs I. C. C. 1048 and 1049, effective March 15, 1918, and ranged from 12 to 17 cents per 100 pounds higher than the rates in effect on the dates of shipment of the logs. Those tariffs contained the following provisions relating to transit and other arrangements:

23 (a) \* \* \* Except as otherwise provided in tariff, rates named in this tariff cover only charges for transportation of freight, and all shipments moving under these rates are entitled to such privileges and subject to such additional charges as are covered by tariffs of individual lines parties to this tariff and lawfully on file with the Interstate Commerce Commission or with the Canadian Railway Commission, for—

*	*	*	*	*	*	*	*	-
Transit Privileges (See Note 1.)								
*	*	*	*	*	*	*	*	-

Also all other charges, privileges and rules applicable at shipping point or destination or in transit which in any way change, increase or decrease or determine any part of the amount to be paid on any shipment between points named herein, or which increase or decrease the value of the service to the shippers.

NOTE 1.—"Transit" privileges, such as milling-in-transit, cleaning-in-transit, refining-in-transit, storage-in-transit, and stopping-in-transit, will be permitted only when specific authority therefor is published herein immediately in connection with the rate on the commodity.

Substantially similar provisions were published in agent Countiss' tariffs I. C. C. 1036 and 1037, in force when the shipments of logs originated. The Texas & Pacific was a party to the transcontinental tariffs.

The contentions of the parties deal principally with the proper construction to be placed upon the last-quoted tariff provisions, par-

ticularly the language of note 1. Complainant contends that the provisions of the transcontinental tariffs had no application to the inbound movement of the logs or the transit thereon at Alexandria; that note 1 had the effect only of prohibiting stoppage of the lumber at a transit point between Alexandria and final destinations; and that those tariffs can not be construed in disregard of the primary and unqualified contract of carriage under the basis held out to the public in I. C. C. 2014. It asserts that, even though it be found that the connections of the Texas & Pacific were not bound by its tariff, the Texas & Pacific must protect the lumber rates that were in effect when the shipments of logs originated.

Defendants urge that the provisions of I. C. C. 2014 must be construed in the light of the provisions of the "governing" transcontinental tariffs naming the rates on lumber from Alexandria; and that the transit rule in I. C. C. 2014 was inoperative in so far as the rates on the outbound lumber are concerned, because the "governing" tariffs, which did not refer to I. C. C. 2014, specifically prohibited transit. They further urge that complainant had the option of shipping the lumber out of the transit point to other destinations under tariffs which did not prohibit milling in transit, but instead shipped to transcontinental destinations "having full notice that the rate named in transcontinental tariff was subject to no transit privileges whatever."

The essential facts are that the shipments of logs were hauled to Alexandria and there manufactured into lumber at rates and under rules published in the Texas & Pacific's local tariff, to which other lines were not parties; that the lumber rates outbound were published in separate tariffs which contained no reference to the tariff of the Texas & Pacific; and that the shipments did not assume the character of lumber shipments, and did not become subject to the transcontinental tariffs, until they were delivered to the carriers at Alexandria for further transportation. It is clear that the transit provisions of the transcontinental tariffs, which named rates on lumber from Alexandria to the destinations here considered, and which did not sanction the Texas & Pacific's transit rule, referred only to transit on the commodity transported and not to the prior transit on the logs at Alexandria. It follows that the transcontinental tariffs were neither governed by I. C. C. 2014 nor had the effect of nullifying the unrestricted provisions of that tariff wherein shippers were notified that when the lumber manufactured from logs transported thereunder to Alexandria moved via the Texas & Pacific to "interstate destinations to which through rates are published in tariffs on file with the Interstate Commerce Commission," the rates to apply would be those in effect from Alexandria to des-

tination "on date of shipment from point of origin of the rough material." Although the rates charged were applicable, the effect of item 43½ of I. C. C. 2014 was that the Texas & Pacific published by reference, without the concurrence of its connections, the joint rates contained in the transcontinental tariffs in effect when the shipments moved. Such a publication of rates was in direct contravention of our rules made under authority of section 6 of the act. Complainant was justified in relying upon the lower basis of rates thus offered and thereby suffered damages for which we may award reparation.

We find that complainant made the shipments of lumber as described and paid and bore the freight charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those that would have accrued at the rates in effect on dates of shipment of the logs from which the lumber was manufactured; and that it is entitled to reparation, with interest, from the Texas & Pacific Railway Company on the shipments of lumber manufactured from logs shipped prior to federal control, and from the Director General, as Agent, on the shipments of lumber manufactured from logs shipped thereafter. Complainant should comply with rule V of the Rules of Practice.

66 I. C. C.

No. 12165.

I. L. GILMORE ET AL.

v.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY  
ET AL.

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*Submitted September 19, 1921. Decided February 25, 1922.*

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1. Rates applicable on lumber, in carloads, from Burkburnett, Tex., to Bristow and Slick, Okla., via Denison, Tex., and to Commerce, Okla., via Frederick, Okla., found not unreasonable. Refund of overcharges directed.
2. Rates applicable on lumber, in carloads, from Burkburnett to Bristow and Slick via Frederick found unreasonable. Collection of undercharges waived. Complaint dismissed.

*H. D. Driscoll* for complainants.*M. G. Roberts* for all defendants except the Northeast Oklahoma Railroad Company.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are I. L. Gilmore, an individual, and the Buschow Lumber Company, a corporation. By complaint filed January 31, 1921, they allege that the rates charged by defendants on 11 carloads of lumber shipped during October, November, and December, 1920, from Burkburnett, Tex., 5 each to Bristow and Slick, Okla., and 1 to Commerce, Okla., were unreasonable. We are asked to award reparation and to prescribe reasonable rates for the future. Rates will be stated in cents per 100 pounds.

Burkburnett is on the Missouri, Kansas & Texas Railway of Texas, hereinafter referred to as the M., K. & T. of T., about 4 miles south of the Oklahoma-Texas state line. Bristow, Slick, and Commerce are local points on the St. Louis-San Francisco, hereinafter called the Frisco, Oklahoma Southwestern, and Northeast Oklahoma, respectively. Two of the shipments to Bristow moved over the M., K. & T. of T., to Denison, Tex., and the Frisco beyond, 363 miles; and one to Slick moved over the same route as far as Bristow and thence over the Oklahoma Southwestern, 374 miles. On these three ship-

ments charges were collected at the applicable commodity rates of 39 cents to Bristow and 44.5 cents to Slick.

The other shipments moved as routed by the shipper: three to Bristow, over the M., K. & T. of T., and the Wichita Falls & Northwestern, both Missouri, Kansas & Texas system lines, to Frederick, Okla., and the Frisco to destination, 262 miles; four to Slick, over the same route as far as Bristow and thence over the Oklahoma Southwestern, 273 miles; and to Commerce, the M. K. & T. of T., and Wichita Falls & Northwestern to Frederick, Frisco to Miami, Okla., and the Northeast Oklahoma beyond, 392 miles. This routing was designated in order to avoid delay incident to the then existing congestion of traffic at Wichita Falls, Tex., through which shipments routed via Denison would move. Charges on these eight shipments were collected at rates of 39 cents to Bristow; 44.5 cents to Slick; and 56.5 cents to Commerce. The rates applicable over these routes were the class-D distance rate of 44.5 cents, based upon the short-line distance, to Bristow; a rate of 52.5 cents to Slick, made up of the class-D distance rate of 44.5 cents to Bristow and the class-D arbitrary of 8 cents beyond; and a combination rate of 53 cents to Commerce. The shipment to Commerce was overcharged 3.5 cents; the three to Bristow and four to Slick were undercharged 5.5 and 8 cents, respectively. Prompt refund of the overcharge should be made.

The short-line distances from Burkburnett are shown as 220 miles to Bristow; 232 miles to Slick; and 351 miles to Commerce. For these distances the rates provided under the Oklahoma distance scale on lumber are 29.5, 33.5, and 40 cents, respectively. Complainant seeks reparation to the basis of these rates.

The 39-cent rate via Denison to Bristow is a group rate applying from a large producing area in Texas and Louisiana to destinations in the eastern half of Oklahoma and certain territory east and north thereof. The rate of 44.5 cents via Denison to Slick is based upon the 39-cent rate to Bristow and an arbitrary of 5.5 cents from Bristow to Slick. The M., K. & T. of T. maintains these rates by way of Denison in order to obtain the long haul on this traffic. It contends that to require their establishment by way of Frederick would result in its being short hauled in violation of section 15 of the interstate commerce act. This carrier is a party to joint rates via Frederick to Bristow on class traffic.

The shipments moved to lumber yards of complainant Gilmore at these destinations as a result of the abandonment of his yard at Burkburnett. No lumber is produced at Burkburnett, and from the evidence it appears that no future movement from that point is probable.

We find that the rates applicable on the shipments transported through Denison to Bristow and Slick, and through Frederick to Commerce, were not unreasonable; that the rates applicable on the shipments transported through Frederick to Bristow and Slick were unreasonable to the extent that they exceeded 39 and 44.5 cents, respectively. Collection of the undercharges should be waived. The complaint will be dismissed.

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No. 12324.

WOFFORD OIL COMPANY

v.

DIRECTOR GENERAL, AS AGENT, HOUSTON & BRAZOS  
VALLEY RAILWAY COMPANY, ET AL.

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*Submitted August 20, 1921. Decided February 25, 1922.*

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Rate on gasoline, in tank-car loads, from Bryanmound, Tex., to Birmingham, Ala., found unreasonable. Reparation awarded.

*O. L. Bunn* for complainant.

*E. C. Blanchard* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner.

Complainant is a corporation marketing petroleum and its products at Birmingham, Ala. By complaint filed February 21, 1921, it alleges that the charges collected on nine tank-car loads of gasoline shipped during July and August, 1919, from Freeport and Bryanmound, Tex., to Birmingham, were unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to award reparation. Rates are stated in cents per 100 pounds.

Freeport and Bryanmound are near the Gulf of Mexico, about 60 miles south of Houston, Tex. Upon the record it appears that all the shipments moved from Bryanmound. The aggregate billed weight, taking into consideration the carload minima, was 479,892 pounds. The shipments moved over the Houston & Brazos Valley to Anchor, Tex., International & Great Northern to Houston, Southern

Pacific lines to New Orleans, La., and Southern to destination, 761 miles. Charges of \$3,119.30 were collected at a rate of 65 cents. A combination rate of 62.5 cents was applicable, composed of commodity rates of 13 cents to Houston, 12 cents to New Orleans, and 33 cents to Birmingham, plus the increase of 4.5 cents established subsequent to general order No. 28 of the Director General. On October 24, 1918, complainant, having contracted with Freeport and Bryanmound producers for a quantity of gasoline, requested the establishment of a lower rate. On August 14, 1919, a rate of 54.5 cents, composed of commodity rates of 19 cents to New Orleans and 35.5 cents beyond, became effective. Reparation to the basis of this rate is sought. The shipments here considered marked the beginning of a regular movement from Bryanmound and Freeport to complainant's plants.

The joint rates contemporaneously in effect from Enid, Guthrie, Tulsa, Muskogee, and Oklahoma City, representative Oklahoma points, to Birmingham ranged from 52.5 to 56.5 cents, the average distance being about 738 miles. The rate from the Fort Worth, Tex., group to Birmingham, an average distance of 737 miles, was 49.5 cents, composed of a proportional commodity rate of 12 cents to Vicksburg, Miss., a commodity rate of 33 cents beyond, and the general increase of 4.5 cents. A rate of 49.5 cents composed of similar factors, but based on New Orleans, also applied from the Beaumont-Port Arthur, Tex., group, for distances ranging from 518 to 744 miles, and from the Louisiana group for distances averaging about 500 miles. A rate of 37.5 cents from Cairo, Ill., to Birmingham, 334 miles, was also referred to.

An attempt was made to justify the reasonableness of the through charges by comparisons intended to show that the factors composing the combination rate were not unreasonably high. For example, the 13-cent factor to Houston was compared with the so-called Texas distance-scale rates in effect for joint-line hauls of from 60 to 65 miles within that state, namely, the fifth-class rate of 29.5 cents and commodity rates of 28 cents on gasoline, 13.5 cents on crude oil, 19 cents on cottonseed oil, 17 cents on angle iron, 18 cents on bar iron, 25 cents on canned goods, 29 cents on sugar, and 18 cents on petroleum asphalt. In the absence of commodity rates most of these commodities take fifth class under the western classification. They move in great volume within the state of Texas, but it is not contended that any of them, except petroleum oils, move from Texas points to Birmingham. The factor from Houston to New Orleans, as well as the factor to Houston, is said to reflect the influence of water competition. In brief on exceptions it is conceded by the Director General, as Agent, that the factors to the Mississippi River should be con-

sidered in the aggregate. The above comparisons therefore fall short of their intended effect. The distance from New Orleans to Birmingham is 355 miles. The factor for this part of the movement was compared with rates of 36.5 and 50.5 cents contemporaneously in effect for distances of 215 to 363 miles in the Mississippi Valley and the southeast which are admittedly constructed on a different basis.

We find that the rate assailed was unreasonable to the extent that it exceeded 54.5 cents; that complainant made the shipments as described and paid and bore the charges thereon; that it was damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found to have been reasonable; and that it is entitled to reparation in the sum of \$503.89, with interest.

An order awarding reparation will be entered.

66 I. C. C.



No. 12262.

## NATIONAL SUPPLY COMPANY

v.

CHICAGO BURLINGTON & QUINCY RAILROAD COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted July 15, 1921. Decided February 25, 1922.*

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Rates on coke, in carloads, from Terre Haute, Ind., to Coburg and Fontanelle, Iowa, and Adams, Nebr., found not unreasonable or otherwise unlawful.  
Complaint dismissed.

*G. W. Abarr* for complainant.

*John F. Finerty* and *E. C. Blanchard* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by the Director General, as Agent, to the report proposed by the examiner. We have reached conclusions differing from those suggested by him.

Complainant, a corporation dealing in building material, coal, and coke at Lincoln, Nebr., alleges that the rates charged on three carloads of coke shipped from Terre Haute, Ind., September 21, October 1, and November 13, 1919, to Adams, Nebr., and Fontanelle and Coburg, Iowa, respectively, were unreasonable and unjustly discriminatory. We are asked to prescribe reasonable rates for the future and to award reparation. Rates will be stated in amounts per ton of 2,000 pounds, and do not include the general increase of 1920.

Coburg and Fontanelle are on branch lines of the Chicago, Burlington & Quincy, hereinafter called the Burlington, east of Omaha, Nebr., and 619 and 590 miles, respectively, from Terre Haute. Adams is southwest of Omaha and southeast of Lincoln, Nebr., on the line of the Burlington extending from Lincoln to Table Rock, Nebr., 736 miles from Terre Haute via Chicago and Lincoln and 610 miles via St. Louis. From Terre Haute the distances to Omaha and Lincoln via Chicago are 673 and 707 miles, respectively.

The shipments aggregated 180,200 pounds, were routed by the shipper "S. E. and Q.," and moved over the Chicago, Terre Haute & Southeastern to Chicago, Ill., the Indiana Harbor Belt to Blue

63 I. C. C.

Island, Ill., and the Burlington beyond. Charges were collected at combination commodity rate of \$5.20 to Coburg and Fontanelle and \$5.10 to Adams, composed of rates of \$1.90 to Chicago, \$3.30 to Coburg and Fontanelle, and \$3.20 to Adams. The correct factor from Chicago to Adams was \$3.50.

Complainant contends that the shipment to Adams was misrouted. A joint rate of \$4.50 was in effect from Terre Haute to Lincoln, Nebr., over lines parties to the tariff, through St. Louis, Mo., and applied to Adams under the intermediate clause of the tariff. Both carriers named in the routing instructions enter Chicago and their lines constitute a complete route with the aid of a switch movement by a switching road. The charges of the latter were absorbed by the former. For all practical purposes the routing instructions were complete, and as the shipment to Adams moved in accordance therewith it was not misrouted.

When the shipment to Coburg moved, defendants maintained a joint rate of \$4.30 from Terre Haute to Omaha, Nebr., which, under the intermediate clause of the tariff, was applicable to all points not named therein directly intermediate to Omaha, including Red Oak, Iowa. A distance commodity rate of 60 cents applied from Red Oak to Coburg. Therefore, the rate applicable on this shipment was the resulting combination, \$4.90. The Director General, as Agent, should promptly refund the overcharge, with interest.

Complainant contends that the Omaha rate should be accorded to Coburg and Fontanelle because they are less distant from Terre Haute than Omaha; and that as Adams is nearer Terre Haute than Lincoln, via either Chicago or St. Louis, it should be given the Lincoln rate via Chicago. It urges that the publication by the Burlington of rates on anthracite and bituminous coal from Chicago, St. Louis, Peoria, and other basing points to its stations in Iowa and Nebraska, north, east, and south of Omaha and Lincoln, the same as or lower than to Omaha and Lincoln is indicative that the rates assailed are unreasonable in comparison with rates on the same commodity to Omaha and Lincoln.

Rates from points east of Chicago to the territory west thereof are generally made by combination on Chicago or the Mississippi River crossings, including St. Louis, and defendants assert that, as there has been no movement of coke from Terre Haute to these destinations since the shipments here considered, joint rates are unnecessary. They contend that the normal movement of coke to these points is from St. Louis, Chicago, and other competitive coke-producing points west of Terre Haute, and that until the rates from these competing points, which are factors in the combinations here assailed, are found unreasonable, this method of making rates should

not be condemned; that these factors and the applicable combinations thereof were and are reasonable on this traffic; and that if joint rates are published from Terre Haute to these branch-line points similar rates must be established to the same points from Connellsville, Pa., Indianapolis, Ind., and numerous other eastern points of production.

Defendants show that the ton-mile revenues of 7.8, 8.6, and 7.2 mills yielded by the rates applicable over the routes of movement to Coburg, Fontanelle, and Adams, respectively, are not unduly high in comparison with similar earnings under contemporaneously applicable rates on coke for similar distances from Connellsville to destinations in Illinois, and from points in Indiana, Illinois, Missouri, Wisconsin, and Minnesota, to stations in Iowa, Nebraska, and other states in the same general territory, and that the ton-mile earnings produced by the factors from Chicago to destinations compare favorably with those under rates for approximately the same distances from St. Louis, St. Paul, Minn., Granite City, Ill., and other points to stations in Iowa, Nebraska, Kansas, and Oklahoma. They assert that the greater volume of traffic moving in the territory east of Chicago under many of the rates compared warrants lower rates than in the territory west of Chicago.

Complainant submitted no evidence in support of the allegation of unjust discrimination.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 12166  
BOISE GAS LIGHT & COKE COMPANY  
*v.*  
DIRECTOR GENERAL, AS AGENT, DENVER & RIO  
GRANDE RAILROAD COMPANY, ET AL.

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*Submitted September 26, 1921. Decided February 25, 1922.*

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Rates on run-of-mine coal from Sunnyside, Utah, to Boise, Idaho, found not unreasonable or otherwise unlawful. Complaint dismissed.

*R. H. Johnson, C. H. Nixon, and George B. Graff* for complainant.  
*H. A. Scandrett, George H. Smith, John O. Moran, and J. M. Souby* for defendants.

*Eugene B. Sherman* for city of Boise, intervener.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant manufactures gas and coke at Boise, Idaho. Its complaint, filed January 31, 1921, assails the rates of \$4.50 in effect prior to August 26, 1920, and \$5.625 thereafter on run-of-mine coal from Sunnyside, Utah, to Boise, as unreasonable, unjustly discriminatory, and unduly prejudicial to the extent that they exceeded and exceed the rates contemporaneously applicable on the same grade of coal from Sunnyside to Twin Falls, Idaho. We are asked to prescribe a reasonable and nonprejudicial rate, and to award reparation. The city of Boise intervened in support of the complaint but took no part in the proceedings. Rates are stated in amounts per net ton.

Boise is on a branch of the Oregon Short Line, 436 miles northwest of Salt Lake City, Utah, and 594 miles from Sunnyside. Twin Falls is on another branch of the same carrier, 289 miles from Salt Lake City and 447 miles from Sunnyside. Sunnyside is 158 miles southeast of Salt Lake City on the Denver & Rio Grande, and is the terminus of a 17-mile spur extending from Mounds on the main line.

Coal is mined extensively in central Utah in what is known as the Castle Gate district. All of the mines in this district, as a rule,  
66 I. C. C.

take the same rates to the same destinations. Sunnyside is at some distance from the main group and prior to August 26, 1920, its rates were made by adding 10 cents to the group rates from Castle Gate. The differential is now 12.5 cents. Utah coal is marketed generally throughout Idaho, and during the sugar season large quantities of run-of-mine coal are consumed at the sugar factories in southern Idaho. Coal mined at Sunnyside differs in character from that produced in the Castle Gate district, and because of its coking qualities is sold almost exclusively to manufacturers of artificial gas. The only points in southern Idaho to which this coal moves are Pocatello and Boise. The tariff naming rates from Utah mines to stations in Idaho and other northern states classifies the different grades of coal into lump, nut, and slack. Run-of-mine includes lump coal as well as smaller sizes, and takes lump-coal rates unless lower rates are specifically published. Generally speaking, to points east and south of Pocatello the rates on lump and nut are the same, and lower rates apply on slack. West of Pocatello the rates on the three grades of coal differ. To Boise, for illustration, the rates from the Castle Gate district are \$5.50 on lump, \$4.875 on nut, and \$4.625 on slack. As stated, rates from Sunnyside are 12.5 cents higher.

Rates on run-of-mine coal lower than on lump are published to a number of points both west and south of Pocatello, including Twin Falls. Formerly the same rates applied on both grades. The first departure from that basis was made in 1906 when the Union Pacific and Oregon Short Line established a rate on run-of-mine lower than on lump from the Wyoming mines to Lincoln and Sugar City, Idaho, in order to stimulate the development of sugar factories at those points. Other beet-sugar factories were established in southern Idaho from time to time, and they were also accorded the benefit of the lower rates on run-of-mine coal. In 1916 a factory was placed in operation at McMillan, Idaho, about 1.5 miles from Twin Falls, which accounts for the lower rate on run-of-mine to that point. The adjustment in effect from the Wyoming mines to these sugar-factory points was subsequently made from mines in the Castle Gate district in Utah, and thus became effective from Sunnyside because of the manner in which the rates from that point are published.

Complainant shows that rates on run-of-mine lower than on lump apply to 135 points in northern Utah and southern Idaho on the Oregon Short Line, and that to these points the average difference between the rates on the two grades is 54 cents. Most of these stations are intermediate to sugar-manufacturing points and take the basis of rates in effect to the more distant points. Based on the increase in the rate on lump from Salt Lake City to the Utah-Idaho state line, 50 cents for 100 miles, complainant contends that the in-

crease in rate to Boise and a number of other points in Idaho, averaging 353 miles from Salt Lake City, should not exceed \$1.765. This amount, added to the rate of \$2.10 from Castle Gate to Salt Lake City, would produce a through rate of \$3.865. By deducting 54 cents, the average differential in favor of run-of-mine coal to southern Idaho points, and adding thereto the differential of 12.5 cents on traffic from Sunnyside, complainant arrives at a rate of \$3.45, which, it says, is a reasonable rate to apply on shipments of run-of-mine from Sunnyside to Boise. This is 80 cents less than the rate on the same grade of coal from Sunnyside to Twin Falls. Complainant asks, however, for a rate not in excess of \$4.25.

Rates on coal from the Castle Gate district to Boise and Twin Falls were prescribed in *Consolidated Fuel Co. v. A., T. & S. F. Ry. Co.*, 24 I. C. C., 213, decided June 3, 1912. Prior to that date, in *Idaho Commercial Clubs v. O. S. L. R. R. Co.*, 18 I. C. C., 562, we prescribed a rate of \$3.50 to these points from the Kemmerer and Rock Springs mines in southern Wyoming, applicable on coal of all grades. The rates from the Castle Gate district were fixed in the *Consolidated Fuel Co. Case, supra*, on the basis of a differential of 25 cents over those from Wyoming. The \$3.50 rate from the Wyoming mines to Boise, Twin Falls, and other points in southern Idaho was again before us in *Public Utilities Commission of Idaho v. O. S. L. R. R. Co.*, 33 I. C. C., 103, decided February 9, 1915, and was found not unreasonable. In *Compton Coal Co. v. D. & R. G. R. R. Co.*, 55 I. C. C., 718, we found that the rates in effect from Castle Gate and Sunnyside to Boise, prior to their reduction in compliance with our decision in the *Consolidated Fuel Co. Case, supra*, were not unreasonable. The present rates to Boise and Twin Falls reflect the increases following *The Fifteen Per Cent Case*, 45 I. C. C., 303, general order No. 28 of the Director General of Railroads, and the general increase of 1920. The Sunnyside-Boise rate in effect subsequent to August 25, 1920, yields earnings of 9.47 mills per ton-mile and 45.5 cents per car-mile, based on a car loading of 48 tons, the average weight of the shipments upon which reparation is asked.

While the rate on run-of-mine to Boise is alleged to be unreasonable, the principal complaint appears to lie in the fact that it exceeds the corresponding rate to Twin Falls. This adjustment is said to subject complainant to undue prejudice and disadvantage to the undue preference of and advantage to the sugar industry at Twin Falls. There is no competition between complainant and the consumers of run-of-mine coal at Twin Falls, nor, so far as the record shows, at any other point where a distinction is made between rates on lump and run-of-mine. Moreover, Sunnyside coal does not move

to Twin Falls. Rates to points where it does move are made, so far as classification of grades is concerned, in the same manner as to Boise. Nothing appears upon this record to indicate that complainant is in any way prejudiced or suffers any disadvantage in its manufacture of gas and coke at Boise because the rate on run-of-mine coal thereto from Sunnyside is higher than the corresponding rate on the same grade of coal to Twin Falls.

We find that the rates assailed are not unreasonable or otherwise unlawful. The above findings are without prejudice to the conclusions which may be reached in any other proceeding as to the general level of the rates on coal in this territory. The complaint will be dismissed.

66 I. C. C.

No. 12181.  
STANDARD ASPHALT & REFINING COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, MIDLAND VALLEY  
RAILROAD COMPANY, ET AL.

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*Submitted September 3, 1921. Decided February 25, 1922.*

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Rates on gasoline, in tank-car loads, from Big Heart and Turley, Okla., to Independence, Kans., found unreasonable. Reparation awarded.

*Warren T. Spies* for complainant.

*E. C. Blanchard* for Director General

*J. W. Cline* for Midland Valley Railroad Company.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.  
BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner. Our conclusions differ somewhat from those recommended by him.

Complainant, a corporation, refines petroleum at Independence, Kans. By complaint filed February 5, 1921, it alleges that the rate of 19.5 cents charged on three tank-car loads of gasoline of the type known as absorption gasoline shipped in March, 1919, to Independence, two from Turley, Okla., and one from Big Heart, Okla., was unreasonable and unduly prejudicial to the extent that it exceeded 15.5 cents. Reparation only is asked. Rates are stated in cents per 100 pounds.

Absorption gasoline is a type of gasoline produced from natural gas by the so-called absorption process.

Turley and Big Heart are on the Midland Valley about 6 and 35 miles, respectively, northwest of Tulsa, Okla. They are intermediate between Tulsa and Independence over the route of movement. Turley is a nonagency station and the shipments from that point were billed from Tulsa. The shipments weighed 160,426 pounds and moved, as routed, over the Midland Valley to Nelagony, Okla., Missouri, Kansas & Texas to Coffeyville, Kans., and the Missouri Pacific to destination. Charges of \$312.86 were collected at the applicable joint commodity rate of 19.5 cents, which was the rate on petroleum oil and its products, including compounded petroleum

66 I. C. C.



oils, from certain group points in Oklahoma to Independence and a number of other points in Kansas.

In support of its allegations complainant relies upon the fact that the tariff naming the 19.5-cent rate also carried a rate of 15.5 cents on petroleum oil and its products, including compounded petroleum oils, from Tulsa to Independence; that this rate was unrestricted as to routing, and was published subject to rule 77 of our Tariff Circular 18-A. Because of the 19.5-cent commodity rate in effect from Turley and Big Heart, rule 77 was not applicable, *Stone to Des Moines, Iowa*, 37 I. C. C., 372, and the rate assailed was in violation of the fourth section.

The witness for defendants endeavored to show that the 15.5-cent rate from Tulsa was a subnormal rate published to meet the Kansas intrastate rates; that it applied only from a few points in northern Oklahoma and was originally established by the Atchison, Topeka & Santa Fe, over which route Independence is 91 miles from Tulsa, whereas by the route of movement it is 112 miles. This witness admitted that the rate from Tulsa was not restricted because the Midland Valley desired to participate in the traffic from that point. The publication of the 15.5-cent rate from Tulsa subject to rule 77 is tantamount to an admission by the defendants that the higher rates from Turley and Big Heart were unreasonable. *Missouri River Building Stone Rates*, 28 I. C. C., 269; *Herrmann & Co. v. N. Y., N. H. & H. R. R. Co.*, 51 I. C. C., 118; *Sunderland Bros. Co. v. C., B. & Q. R. R. Co.*, 51 I. C. C., 185.

We find that the rate assailed was unreasonable to the extent that it exceeded 15.5 cents; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that it is entitled to reparation in the sum of \$64.20, with interest. It is expected that the existing fourth section violations will be corrected forthwith.

An order awarding reparation will be entered.

66 I. C. C.

No. 12310.  
BUHLER MILL & ELEVATOR COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

*Submitted October 20, 1921. Decided February 25, 1922.*

Rates charged on shipments of flour and grain products milled at Buhler, Kans., from wheat originating in Oklahoma and Kansas and shipped to eastern points, found applicable and not unreasonable. Complaint dismissed.

*E. H. Hogueland* for complainant.

*M. G. Roberts* and *Royal McKenna* for defendants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by complainant to the report proposed by the examiner.

Complainant, a corporation milling grain at Buhler, Kans., alleges that the rates charged on shipments of flour and grain products, milled at Buhler from grain originating at points on the St. Louis-San Francisco, hereinafter called the Frisco, in Oklahoma and Kansas, and shipped between September, 1919, and January, 1920, to points in Missouri and states east thereof, were unjust and unreasonable. The prayer is for reparation. Rates and charges will be stated in cents per 100 pounds.

Buhler is on the line of the Frisco extending from Beaumont Junction to Ellsworth, Kans. The direct route of the Frisco to the east from most of the points of origin is through Tulsa, Okla., but the rates are also applicable via Beaumont Junction. The transit tariff authorized milling at Buhler at the applicable rates plus an out-of-line charge for the added haul from Beaumont Junction to Buhler and return. Prior to June 25, 1918, the out-of-line charge was 3 cents. On that date, under authority of general order No. 28 of the Director General of Railroads, general supplements to the applicable tariffs became effective. These supplements provided:

This supplement does not increase transit charges which are additional to freight rates and are assessed to cover the transit privilege proper, but does apply to charges for out-of-line, back or other road hauls when separately stated.

\* \* \* \* \*

Carload commodity rates on flour and other mill products and articles (except grain and seeds) listed therewith taking grain or grain product rates \* \* \* are hereby increased in accordance with table of rates shown on pages 4 to 7 but not exceeding an increase of 6 cents per 100 pounds. \* \* \*

The transit tariff which carried the out-of-line charge was an issue separate from the tariffs naming the rates, and the table shown on page 4 of the general supplement to this issue provided that charges of 3 cents would be increased to 4 cents.

Defendants have construed the supplements as increasing the rates and the out-of-line charge separately. In other words, if, on June 24, 1918, the rate was 40 cents, defendants' view is that it was increased to 46 cents and that the out-of-line charge was increased to 4 cents, making an aggregate increase of 7 cents. Transportation charges have been assessed on this basis. Complainant contends that this interpretation is erroneous and that before applying the increase the aggregate of the rate and the out-of-line charge in effect on June 24 should be ascertained and that aggregate then increased by the amount provided in the table, maximum 6 cents. This contention can not be sustained.

Complainant further contends that if the tariffs provide for separately increasing the components of the aggregate charge such increases are unreasonable because not in compliance with general order No. 28. This lack of compliance does not appear from examination of the order and the supplements but, even if it existed, it would of itself afford no basis for a finding of unreasonableness. *Parlin & Orendorff Co. v. Director General*, 59 I. C. C., 63; *Tallulah Cotton Oil Co. v. Director General*, 62 I. C. C., 42.

We find that the rates assailed were applicable and not unreasonable or otherwise unlawful.

The complaint will be dismissed.

63 I. C. C.

No. 12811.  
SWIFT & COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted September 2, 1921. Decided February 25, 1922.*

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Rates on fertilizer, in bags, in carloads, from Cleveland to Minford, Ohio, during federal control, found unreasonable. Reparation awarded.

*A. C. Owen* for complainant.

*John F. Finerty* and *Thomas M. Woodward* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant, a corporation manufacturing fertilizer at Cleveland, Ohio, alleges, by complaint filed February 18, 1921, that the rates charged on five carloads of fertilizer, in bags, shipped between March 8, 1918, and March 29, 1919, both inclusive, from Cleveland to Minford, Ohio, were unreasonable. Reparation only is sought.

The shipments moved from Parma, a point on the Baltimore & Ohio within the Cleveland switching district, which takes the same rates as Cleveland. They aggregated 313,081 pounds and moved from Cleveland over the Cleveland, Cincinnati, Chicago & St. Louis to Columbus, Ohio, and the Chesapeake & Ohio Northern beyond, 220 miles. Charges of \$783.58 were collected at the applicable combination sixth-class rates of 20.5 cents prior to June 25, 1918, composed of 11 cents to Columbus and 9.5 cents beyond, and 26 cents on and after June 25, 1918, composed of 14 cents to Columbus and 12 cents beyond. Joint sixth-class rates of 14 cents prior to June 25, 1918, and 17.5 cents thereafter were in effect from Minford to Cleveland over the route of movement. Complainant contends that the rates charged were unreasonable to the extent that they exceeded the rates in the opposite direction. On December 2, 1919, a joint rate of 17.5 cents was established from Cleveland to Minford and this rate is satisfactory to complainant.

Fertilizer, in bags, in carloads, is, and for many years has been, rated sixth class in official classification. The sixth-class rates in 66 I. C. C.

effect at the time the shipments moved were those prescribed in *C. F. A. Class Scale Case*, 45 I. C. C., 254, as increased under *The Fifteen Per Cent Case*, 45 I. C. C., 303, or as further increased on June 25, 1918, under general order No. 28 of the Director General of Railroads. They applied for both single-line and joint-line hauls and generally throughout central territory, including Ohio. When the shipments moved, Minford was a new station on a comparatively new line of railroad that had been opened for business in the early part of 1917.

Complainant compares the rates charged with sixth-class rates ranging from 13 to 17 cents, in effect subsequent to June 25, 1918, from Cleveland to points on the Hocking Valley and Toledo & Ohio Central for two-line hauls of substantially the same length as that under consideration.

Defendant insists that the combination rates charged were not unreasonable, but offered no evidence in support and no explanation of the maintenance of lower rates in the opposite direction.

We find that the rates charged were unreasonable to the extent that they exceeded 14 cents prior to June 25, 1918, and 17.5 cents on and after that date; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

66 I. C. C.

No. 12382.

## CHEVROLET MOTOR COMPANY OF TEXAS

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO, ROCK  
ISLAND & PACIFIC RAILWAY COMPANY, ET AL.

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*Submitted September 16, 1921. Decided February 25, 1922.*

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Rates on auto-body woodwork, knocked down, in carloads, from St. Louis, Mo., to Fort Worth, Tex., found unreasonable. Reparation awarded.

*Frank A. Gaynor, John T. Smith, and C. R. Scharff* for complainant.

*Thomas M. Woodward* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the automobile business at Fort Worth, Tex. By complaint filed February 21, 1921, it alleges that the rates charged on auto-body woodwork, knocked down, in carloads, shipped from St. Louis, Mo., to Fort Worth, between September 13, 1917, and February 28, 1920, both inclusive, were unjust, unreasonable, and unduly discriminatory. We are asked to award reparation. Rates will be stated in cents per 100 pounds.

These shipments were similar to those described in *Chevrolet Motor Co. v. Director General*, 59 I. C. C., 685. Commodity rates of 64 cents prior to June 25, 1918, and 80 cents on and after that date, minimum 30,000 pounds, were applicable. Commodity rates of 50 cents prior to June 25, 1918, and 62.5 cents on and after that date, minimum 36,000 pounds, were in effect on wagon material in the rough or wholly or partly finished. Effective February 29, 1920, the commodity here considered was included in the item taking the last-named rate.

Complainant contends that the applicable rates were unreasonable to the extent that they exceeded the contemporaneous rates on wagon material.

66 I. C. C.

The earnings under the rates applicable and under those in effect on wagon material, based on a distance of 760 miles and carload minima, are as follows:

	Rate.	Ton-mile revenue.	Car-mile revenue.
Auto-body woodwork:	<i>Cents.</i>	<i>Mills.</i>	<i>Cents.</i>
Prior to June 25, 1918.....	64	16.8	25.3
June 25, 1918, to Feb. 29, 1920 .....	80	21.1	31.6
Wagon material:			
Prior to June 25, 1918.....	50	13.2	20.7
June 25, 1918, to Feb. 29, 1920.....	62.5	16.4	25.6

Based on an average weight of 41,000 pounds, the rates charged would produce car-mile earnings of 34.5 cents to June 25, 1918, and 43.2 cents thereafter.

Defendants' witness testified that the item naming the applicable rates originally covered wagon material; that when the automobile industry began to establish plants in the southwest it was amended to include auto-body woodwork; and that this was not satisfactory and this woodwork was added to the item naming rates on certain wooden wagon material. Some testimony was offered to the effect that auto-body woodwork is more highly finished, loads lighter, and is a higher-grade commodity than wagon material, but such testimony is too general to be of controlling weight. An examination of several of the most complicated parts of the auto-body woodwork, offered in evidence, indicates that they are unfinished and of a low-grade material.

We find that the rates assailed were unreasonable to the extent that they exceeded 50 cents prior to June 25, 1918, and 62.5 cents on and after that date, minimum 36,000 pounds; that complainant made shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those which would have accrued at the rates herein found reasonable; and that it is entitled to reparation. Complainant should comply with rule V of the Rules of Practice.

66 I. C. C.

No. 11296.

WILLIAM ALTER ET AL.

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO GREAT  
WESTERN RAILROAD COMPANY, ET AL.

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Submitted March 9, 1921. Decided February 9, 1922.

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Rates published by carriers pursuant to our orders in *Interior Iowa Cases*, 46 I. C. C., 39, found not unreasonable or unduly prejudicial. Complaint dismissed.

*J. H. Henderson, Walter Condran, and C. M. Updegraff* for complainants.

*Walter H. Jacobs and Frank H. Towner* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, AITCHISON, AND EASTMAN.

HALL, *Commissioner*:

Exceptions were filed by complainants to the report proposed by the examiner and the case was orally argued.

Complainants are 72 corporations, partnerships, and individuals in business at Mason City, Iowa. By complaint filed March 1, 1920, as amended, they allege that the proportional class rates between west-bank Mississippi River crossings and Mason City on traffic originating at or destined to official territory east of the Indiana-Illinois state line were unjust, unreasonable, and unduly prejudicial between February 1, 1918, and March 14, 1919, inclusive. Reparation only is sought. Rates will be stated in cents per 100 pounds.

No substantial evidence was introduced to show that the rates were unduly prejudicial or unreasonable *per se*. Complainants' main contention is that defendants failed to establish rates in accordance with our report and orders in *Interior Iowa Cases*, 46 I. C. C., 39. In that case we prescribed a scale of proportional class rates to apply "between the west bank of the Mississippi River and interior Iowa cities." The rates for distances pertinent to the issues here presented are as follows:

Haul.	1	2	3	4	5	A	B	C	D	E
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
161 to 180 miles.....	36	27	21	16	13	14	11.5	9.5	8	6.5
181 to 200 miles.....	40	30	23	18	15	16	13	10.5	8.5	7.5
201 to 220 miles.....	43	32	25	19	16	17	14	11.5	9	8



Our original order required the establishment of this scale by defendants "according as they participate in the transportation." On April 3, 1918, we entered a further order directing defendants "according as they participate in the transportation" to establish this scale over the short-line routes between points on the west bank where the traffic actually crosses the river and the interior Iowa points, in instances where they had not already done so. The latter order was modified by our order of December 9, 1918, which required that the rates be established over the short combined two-line route from the nearest crossing when the distance over such route is less by 25 miles or more than that over the single-line route from the same crossing, or over the short single-line route "from the nearest Mississippi River crossing when such route does not exceed by 25 miles or more the distance over the short combined two-line route from the same Mississippi River crossing." In that order, which in express terms was a modification of our preceding order, we said:

*It further appearing*, after full consideration of the interests of all parties to these proceedings, and without adversely affecting such interests, including all of the Iowa cities involved, that the aforesaid order of April 3, 1918, will be given substantial force and effect from the standpoint of the practical exigencies of the situation, if modified in the particular that it requires the said defendants to observe the "short line routes" as a basis for establishing the aforesaid scale of proportional class rates.

Mason City is reached directly by five carriers which cross the Mississippi at various points. These carriers, their crossings, and the distances between Mason City and the crossings are:

Carriers.	Crossings.	Distances.
		<i>Miles.</i>
Chicago Great Western.....	Dubuque.....	215
Chicago & North Western.....	Clinton.....	223
Chicago, Milwaukee & St. Paul.....	Sabula.....	215
Chicago, Rock Island & Pacific.....	Davenport.....	211
Minneapolis & St. Louis.....	West Keosauqua.....	203

As the distances over the Chicago, Milwaukee & St. Paul, herein-after called the Milwaukee, the Chicago, Rock Island & Pacific, and the Chicago Great Western between their actual crossings and Mason City are more than 201 and less than 220 miles, the rates for these distances were established February 1, 1918, as a compliance with our original order, and are the rates assailed.

Complainants maintain that our original order required the establishment of rates based on the distance between Mason City and the nearest west-bank crossing where traffic actually crosses the river, which is Dubuque. The short-line distance between these points is 171 miles over the Milwaukee, and they contend that the

rates prescribed for distances from 161 to 180 miles should have been established. In support of this they recite the history of the proportional class rates from Mississippi River crossings to interior Iowa points, and refer to *Interior Iowa Cities Case*, 28 I. C. C., 64, and 29 I. C. C., 536, *The Mississippi River Case*, 28 I. C. C., 47, and 29 I. C. C., 530, and other cases. They point out that in this earlier litigation the carriers in publishing rates to interior Iowa points in compliance with our order, took as a basis the west-bank point nearest the interior Iowa point, and insist that it was accordingly established that the basis for the maximum proportional rate was the short-line distance.

Defendants refer to our original order which required the establishment of rates by the carriers "according as they participate in the transportation," and contend that, since all traffic actually moves between the river and Mason City by single line, each carrier actually participates in the transportation between its particular crossing and Mason City over its own rails for the distance previously shown. They maintain that the establishment of rates based upon the distance between the nearest crossing and Mason City over the route by which the traffic actually moves was a compliance with this order.

The shortest single-line distance from Dubuque to Mason City, 171 miles, is "less than 25 miles more" than the shortest two-line route, 154 miles, over the Chicago Great Western to New Hampton, Iowa, and the Milwaukee beyond. Accordingly, in compliance with our final order, rates between the west-bank crossings and Mason City were established March 15, 1919, on the basis of a distance of 171 miles.

We find that the rates assailed were published pursuant to our orders in the case referred to, and were not unreasonable or unduly prejudicial.

The complaint will be dismissed.

EASTMAN, *Commissioner*, dissenting:

The original order in *Interior Iowa Cases*, 46 I. C. C., 39, required defendants "according as they participate in the transportation" to maintain and apply "between the west bank of the Mississippi River and interior Iowa points" the scale of proportional class rates therein prescribed. It provided no rule for determining the distances to be used in applying the scale and did not exclude west-bank points that are not river crossings. It did not specify whether the rates should be based on short-line distances from the nearest point, or on the average distances from all west-bank points, or whether each carrier should publish the scale rates from each west-bank point served by it. There

was nothing to indicate that the phrase "according as they participate in the transportation," appearing in the orders, was intended to serve any other than its customary function of excluding parties defendant that would not participate in the rates prescribed. The supplemental order of April 3, 1918, required rates to be based on the short-line distances from the points "where the traffic actually crosses the river." Apparently the only effect of this order was to exclude west-bank points that are not river crossings, Muscatine, for example, and to require the use of short-line distances. It failed, as did the former order, to specify which of the several west-bank crossings should be used as a basis for fixing the rates between the Mississippi River and interior Iowa cities.

Dubuque is an important west-bank crossing. The Chicago Great Western, the Illinois Central, and the Chicago, Burlington & Quincy cross the Mississippi River at that point. On the date of our original order proportional rates based on the short-line distance were maintained between Dubuque and Mason City by way of the Chicago Great Western direct, 215 miles; jointly by that line and the Minneapolis & St. Louis, 174 miles; and by the Chicago, Milwaukee & St. Paul, 171 miles. It is not contended that these lines were not participating in the transportation between Mason City and points east of the Indiana-Illinois state line. Clearly there is nothing in the orders which authorized abandonment of the Dubuque gateway, or of any existing route, or the application between that point and Mason City over either of such routes of higher proportional rates than were provided in the scale. Fixing the rates on basis of the longer distance from Sabula in effect eliminated Dubuque as a west-bank crossing and deprived Mason City of any benefit of its proximity to that gateway.

In my judgment, a literal construction of these orders warranted each carrier in establishing rates between the various west-bank crossings and interior Iowa common points, based on the scale for their respective distances, but such an adjustment would have been contrary to the long-established custom of equalizing rates by way of the different routes and river crossings. The order should have been construed in the light of the then existing practice, mentioned in the report, of basing rates on the short-line distances from the nearest crossing. No deviation from that practice was suggested in the report or order. It was followed in fixing rates to Des Moines and other interior Iowa common points and was finally required at Mason City under our order of December 9, 1918.

If it be true that the rates attacked contravened the orders in question, no further proof of unreasonableness or undue prejudice should be required. In this respect the situation is like that considered in

*Railroad Commissioners of Iowa v. M. & St. L. R. R. Co.*, 64 I. C. C., 673, in which we said:

The facts of record and the contentions of the parties relate primarily to the question whether the rates assailed conform with the reasonable and non-prejudicial basis prescribed in *Interior Iowa Cases*, *supra*. In that proceeding we announced the principle which should govern the determination of proportional class and commodity rates between interior Iowa cities and Mississippi River crossings, irrespective of changes in the level of such rates. To the extent that the rates assailed are higher than would result from the correct application of this principle they must, in the absence of convincing evidence to the contrary, be deemed unreasonable and unduly prejudicial.

In this connection there are other facts of record which should be considered. The decision in *Interior Iowa Cases*, *supra*, purported to extend to interior Iowa cities a greater measure of relief than had been granted in former proceedings. In the original case, 28 I. C. C.; 64, 29 I. C. C., 536, we approved a scale of proportional class rates to and from east-bank crossings based on the Iowa distance rates to and from the *nearest* west-bank crossing, plus 2 cents on first and second classes and 1 cent on the lower classes for the river transfer. In the final report, *Interior Iowa Cases*, *supra*, we said, at page 59:

Although the proportional rates subsequently established had our approval, it becomes apparent that the interior Iowa cities were not given the relief which this broader record shows they are entitled to have.

The distance scale of proportional rates there prescribed between west-bank crossings and interior Iowa cities was lower than had been fixed under the former decision. The record in this case shows that the rates attacked ranged from 0.3 cent on class C to 5 cents on first class higher than the rates resulting from our original report, which in turn were condemned as unreasonable and unduly prejudicial in *Interior Iowa Cases*, *supra*. It also appears that they were substantially higher than the local distance tariff rates from Dubuque to Mason City, which contemporaneously applied on intrastate traffic, and which would have been available for use as components of through rates on interstate traffic in the absence of specific rates. Considering these facts and the further fact that the use of Sabula rather than Dubuque, the nearest crossing, as a base point was contrary to the general custom and resulted in relatively higher rates than were applied to and from competing interior Iowa cities, I am unable to escape the conclusion that the rates attacked were unreasonable and unduly prejudicial.

66 I. C. C.

No. 12280.<sup>1</sup>

CENTRAL ILLINOIS LIGHT COMPANY

v.

DIRECTOR GENERAL, AS AGENT, CHICAGO & ALTON  
RAILROAD COMPANY, ET AL.

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*Submitted September 26, 1921. Decided February 25, 1922.*

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Rates on bituminous coal, in carloads, from mines in the Springfield district, and in the Peoria county and Fulton county groups, in Illinois, to Peoria, Ill., during federal control, found not unreasonable. Complaints dismissed.

*R. M. Field* for complainants.

*Royal McKenna* for Director General.

*A. C. Rauch* for Coal Trade Bureau of Illinois and Illinois Coal Traffic Bureau, and *R. W. Ropiequet* for Perry County Coal Corporation, interveners.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants are individuals, firms, and corporations dealing in or using coal at Peoria, Ill. They allege that the rates charged on numerous carloads of bituminous coal shipped between June 25 and October 5, 1918, from mines in the Springfield district, in the Peoria county group, and in Fulton county group No. 1, in Illinois to Peoria were unreasonable. The prayer is for reparation. Intervening petitions were filed by the Illinois Coal Traffic Bureau, Coal Trade Bureau of Illinois, and Perry County Coal Corporation. Rates will be stated in amounts per net ton.

The shipments moved from Springfield, Virden, Girard, Norris, Auburn, Sherman, Kincaid, Pawnee, and Benld, in the Springfield district; from Pottstown, in Peoria county group; and from Norris and Canton, in Fulton county group No. 1. The rates from these groups to Peoria were as follows:

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<sup>1</sup> This report also embraces No. 12291, Sharon Coal Company et al. v. Director General, as Agent, Chicago & Alton Railroad Company, et al.

From—	Prior to June 25, 1918.	Effective June 25, 1918.	Effective Aug. 9, 1918.	Effective Oct. 5, 1918.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Peoria county group.....	47	75	71	63
Fulton county group No. 1.....	50	78	74	66
Springfield district (lump) <sup>1</sup> .....	175	103	.....	95
Springfield district (screenings, slack, etc.).....	164	92	.....	84

<sup>1</sup> Rates not on file with this Commission.

<sup>2</sup> On Oct. 5, 1918, rate from Benld on coal, except lump, was increased from 92 cents to 95 cents and continued in effect until Mar. 3, 1919, when it was reduced to 84 cents. The record does not show that the 95-cent rate was applied on any shipment in controversy.

Complainants contend that the rates established June 25, 1918, were in excess of those authorized by general order No. 28 of the Director General of Railroads, as is evidenced by the subsequent reduction, and were unreasonable to the extent that they exceeded those established October 5, 1918. General order No. 28 authorized increases of specific amounts in the rates on coal: 15 cents where the rates did not exceed 49 cents; 20 cents where the rates were from 50 cents to 99 cents; and greater amounts where the rates were \$1 or more. That order also provided:

Where rates from producing points or to destinations have been based on fixed differentials in cents per ton, such differentials to be maintained, the increase to be figured on the highest rated point or group.

Since 1915 the rates to Peoria from the Springfield district have borne a definite relationship to those from southern Illinois mines. Under general order No. 28 the rate to Peoria from Herrin, a representative point in the southern Illinois coal field, was increased by 28 cents and because of the then existing relationship the rates from the Springfield district were increased by corresponding amounts. An investigation made subsequent to June 25, 1918, developed that practically all coal used in Peoria originated in the Springfield district or in the Fulton county group. As a result the rates from the Springfield district and the Fulton county and Peoria county groups, and between other points, were revised so as to reflect the specific increases authorized in general order No. 28. The freight rate authority authorizing this revision provided that the revised rates were "to be made by adding to the rates in effect on June 24, 1918, the specific advance authorized in section 2 of general order No. 28 on coal, disregarding the rule covering disposition of fractions. Similar changes to be made from mines related to the southern Illinois group to all destinations specified" in particular tariffs. This revision resulted in both reductions and increases, the increases in some instances amounting to 5 cents.

Defendants urge that the reasonableness of the rates did not enter into the revision on October 5, 1918, and that this revision should not

be regarded as an admission of the unreasonableness of the higher rates established on June 25, 1918. The fact that rates were not established in strict conformity with the provisions of general order No. 28 has been repeatedly found by us to be insufficient in itself to support a finding of unreasonableness.

The only other evidence submitted by complainants was a comparison of the ton-mile earnings under the rates assailed with lower earnings under rates between points in Illinois for hauls greatly in excess of those between the points here considered. The rates assailed compare favorably with numerous rates on coal for comparable distances between points in the same territory, referred to by defendants.

We find that the rates assailed were not unreasonable. The complaints will be dismissed.

63 I. C. C.

No. 11454.  
INTERNATIONAL NICKEL COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT, AND GRAND TRUNK  
RAILWAY COMPANY OF CANADA.

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*Submitted January 18, 1921. Decided February 14, 1922.*

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Rate charged on blister copper, in carloads, from Port Colborne, Ontario, Canada, to Constable Hook and Chrome, N. J., found unreasonable. Reparation awarded.

*Luther M. Walter and John S. Burchmore* for complainant.

*Alexander H. Elder and Charles E. Miller* for Director General of Railroads, as Agent.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

Exceptions were filed by defendants to the report proposed by the examiner and oral argument was had.

Complainant, a corporation refining nickel at Port Colborne, Ontario, Canada, and Constable Hook, N. J., alleges that the fifth-class rate of 35 cents charged on 26 carloads of blister copper shipped from Port Colborne to Constable Hook and Chrome, N. J., New York district rate points, between August, 1918, and March 9, 1919, both inclusive, was unreasonable and unduly prejudicial to the extent that it exceeded the subsequently established commodity rate of 23.5 cents. Reparation only is sought. Rates will be stated in cents per 100 pounds.

Three of the shipments moved over the Grand Trunk of Canada, hereinafter termed the Grand Trunk, to Suspension Bridge, N. Y., 22 miles, and thence over the Lehigh Valley to Constable Hook, 466 miles. It appears that the other shipments moved over the Grand Trunk to Black Rock, N. Y., 20 miles, and thence over the Delaware, Lackawanna & Western to Taylor, Pa., and the Central of New Jersey, hereinafter termed the Central, to Constable Hook and Chrome, 452 and 458 miles, respectively.

Complainant began operating its plant at Port Colborne early in the summer of 1918, and on July 30, 1918, asked defendants to establish a commodity rate on blister copper from Port Colborne



to these destinations, stating that shipments would begin to move late in August. A joint commodity rate of 23.5 cents, minimum 40,000 pounds, became effective March 10, 1919.

Prior to the hearing the Director General, as Agent, moved to dismiss the complaint on the ground that, since we have no jurisdiction to prescribe a joint rate for the future from a point in Canada to a point in the United States, we are without power to award reparation for damages growing out of the application of such a rate in the past. This motion was denied, but was renewed at the hearing and on brief. The Grand Trunk, the Canadian corporation defendant, by letter filed prior to the hearing also challenged our jurisdiction to award reparation against it for any portion of the charges which it received for the haul in Canada.

The charging of an unreasonable rate is a tort, *Southern Pac. Co. v. Darnell-Taenzer Co.*, 245 U. S., 531, 534, and the parties to such a rate are jointly and severally liable for any resulting damage. *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. 199; *Atlantic & Pacific Railroad v. Laird*, 164 U. S., 393, 399.

Section 1 (5) of the interstate commerce act provides:

All charges made for any service rendered or to be rendered in the transportation of passengers or property \* \* \* or in connection therewith, shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful \* \* \*

Section 8 of the act provides:

That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, \* \* \* such common carrier shall be liable to the person or persons injured thereby for the *full amount of damages sustained* in consequence of any such violation of the provisions of this Act. \* \* \* [Italics ours.]

American lines parties to a joint rate from or to a point in Canada, the charges under which are unreasonable, "cause to be done" or "do" a thing (i. e., the collection of unreasonable charges for the transportation of property) "prohibited and declared to be unlawful" by the act, and are "liable to the person or persons injured thereby for the full amount of the damage sustained."

In *Black Horse Tobacco Co. v. I. C. R. R. Co.*, 17 I. C. C., 588, we said at page 590 what is equally applicable here:

If the American line saw fit, it might doubtless name a rate to the Mexican border, and in that event we could deal only with the service up to the Mexican line. Instead of adopting that course the American carriers, in connection with the Mexican carrier, established a joint charge for the entire service from the point in the United States to the point in Mexico, and gave no information as to the part of that charge which would accrue to the American roads. This does not relieve the American carriers from obligation to impose a reasonable

charge for their service; it does make it impossible for the Commission to determine the reasonableness of that charge, except by examining the entire through rate.

Clearly, we have no authority to establish a rate of transportation in Mexico; nor to order the maintenance of a rate for the future from a point in the United States to a point in Mexico; but we may require the American carriers to cease and desist from continuing to apply a joint through rate, or any rule, regulation, or practice in connection with that joint through rate, and we may, where such rate has been voluntarily maintained, inquire whether it has been reasonable, and if found unreasonable, award damages in that behalf.

In *Larrowe Milling Co. v. C., W. & L. E. R. R.*, 52 I. C. C., 145, we found the charges collected on certain shipments from Wallaceburg, Ontario, a point on the Chatham, Wallaceburg & Lake Erie to points in the United States, to have been unreasonable and awarded reparation, saying:

In so far as the matter of reparation is concerned, although we are without power to enforce an order against the Chatham, Wallaceburg & Lake Erie Railroad, if these railroads constituting a through route for traffic from a point in Canada to a point in the United States concurred in a through rate or a carload minimum that was unreasonably high, they are jointly and severally responsible for any damage that might result to any shipper on account of such unlawful rate or minimum.

That finding was followed in *Monarch Paper Co. v. C. P. Ry. Co.*, 53 I. C. C., 620.

It is said that the amendments made by the transportation act, 1920, in section 1 of the act to regulate commerce, as amended, have changed or restricted the jurisdiction which was theretofore vested in us by that section. These amendments carry our territorial jurisdiction up to the international boundary line, at which that of Congress itself halts. Our territorial jurisdiction as to foreign commerce is thus coextensive with that of the federal government. No act of Congress has force of law beyond that boundary line, but up to it, as everywhere else within the United States, the interstate commerce act has full effect just as the federal control act had effect when these shipments moved.

By section 1 of the interstate commerce act it is declared that its provisions shall

apply to common carriers engaged in the transportation of \* \* \* property wholly by railroad \* \* \* to any place in the United States \* \* \* from a foreign country, but only in so far as such transportation \* \* \* takes place within the United States,

and

shall also apply to such transportation of \* \* \* property \* \* \* but only in so far as such transportation \* \* \* takes place within the United States, but shall not apply to the transportation of \* \* \* property, or to the receiving, delivering, storage, or handling of property, wholly within one

State and not shipped \* \* \* from a foreign country \* \* \* to any place in the United States as aforesaid.

In view of the variance of opinion entertained with respect to our jurisdiction in the premises, it seems desirable that our ruling in this case, which is fairly characteristic of those presenting the same issue of law, should be reviewed by the courts in order that the extent of our jurisdiction may be judicially established for our guidance in similar cases as they may arise.

The President in time of war took over the possession and operation of the railroads and systems of transportation over which these shipments moved in the United States. The shipments were so moved by him. During the period of federal control the President initiated the rate, in so far as movement within the United States is concerned, under which these shipments moved within the United States, and collected and enforced the rate so initiated. It was charged upon these shipments.

Section 206 (c) of the transportation act, 1920, provides that—

complaints praying for reparation on account of damage claimed to have been caused by reason of the collection or enforcement by or through the President during the period of Federal control of rates \* \* \* charges \* \* \* (including those applicable to interstate, foreign, or intrastate traffic) which were unjust, unreasonable \* \* \* or otherwise in violation of the Interstate Commerce Act, may be filed with the Commission, within one year after the termination of Federal control, against the agent designated by the President under subdivision (a) \* \* \*. The Commission is hereby given jurisdiction to hear and decide such complaints in the manner provided in the Interstate Commerce Act, \* \* \*.

The complaint before us was of this nature and was filed with us in accordance with section 206 (c).

Blister copper is obtained by complainant in the process of refining copper-nickel matte. The shipments averaged 83,271 pounds per car and for a distance of 478 miles the rate assailed yielded 14.6 mills per ton-mile and 61 cents per car-mile. Port Colborne is a 78 per cent rate point, and the rate charged was 78 per cent of the Chicago-New York fifth-class rate on eastbound traffic. The rate on copper from Chrome and Constable Hook to Port Colborne was 24.5 cents, minimum 40,000 pounds. The commodity rate on copper from Chicago to New York rate points was 30 cents and the rate of 23.5 cents subsequently established is 78 per cent of that rate.

Complainant refers to rate of 18.7 cents, minimum 60,000 pounds, on ferrosilicon from Welland, Ontario, and 22 cents, minimum 40,000 pounds, on cyanamid from Niagara Falls, Ontario, to New York. These commodities are said to be similar to blister copper from a transportation standpoint. The rates on black copper, which is competitive with blister copper, from Cleveland and Cincinnati, Ohio, to New

York rate points are based on established percentages of the Chicago-New York rate.

On behalf of the Director General, as Agent, it was testified that points in central territory within the United States are customarily accorded commodity rates based on the same percentage of the New York-Chicago commodity rate as applies in connection with class rates, but that this system of rate making has not been extended to points in Canada between the Niagara frontier and the St. Clair River; that the rates from Detroit, Mich., a 78 per cent rate point, are not necessarily observed as maxima in publishing rates from Port Colborne or other intermediate points in Canada; that the only commodity rate from Port Colborne to New York rate territory is the present rate on blister copper; and that although the latter rate is made on a percentage basis it must be considered as a concession to complainant.

The Grand Trunk hauled the shipments a little more than 20 miles, or less than 5 per cent of the total distance, but received as its division 35 per cent of the total revenue. The commodity rate subsequently established was divided in the same manner. In view of the Grand Trunk's refusal to participate in the hearing, no evidence was presented in defense of the disproportionate division received by it. It is contended that the division received by the lines within the United States, 22.7 cents for a haul of about 460 miles, was not excessive or unreasonable. The ton-mile earnings of these lines on the shipments were less than those of the Central and the Delaware, Lackawanna & Western on all traffic, but the length of the haul greatly exceeded the average haul on all traffic of either the Central or the Lackawanna. We must consider the reasonableness of the joint rate as a whole.

We find that the charges assailed were unreasonable to the extent that they exceeded those that would have accrued at a rate of 23.5 cents per 100 pounds; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those herein found reasonable; and that it is entitled to reparation from the Director General of Railroads, as Agent, with interest. Complainant should comply with rule V of the Rules of Practice.

ESCH, *Commissioner*, dissenting:

I can not agree with the conclusions of the majority in this case. Whatever may have been the rule prior to the enactment of the transportation act, 1920, an amendment therein made to section 1 of the interstate commerce act specifically restricts our jurisdiction over foreign commerce to that part of the transportation taking place within the United States. It is clear from the report of the majority

that the unreasonableness of the through rates assailed inhered in the divisions received for that part of the transportation which took place within Canada and that the charges received for that part of the transportation within the United States were not unreasonable. In my opinion we should follow *Payment of Charges in United States Currency*, 59 I. C. C., 263, wherein it was held that we can not undertake to render a decision affecting the charges for transportation beyond the borders of the United States.

COMMISSIONERS DANIELS and POTTER dissent.

COMMISSIONER AITCHISON did not participate in the disposition of this case.

66 I. C. C.

No. 11973.

NORTHWEST STEEL COMPANY ET AL.

v.

CHICAGO, BURLINGTON &amp; QUINCY RAILROAD COMPANY, DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted January 19, 1922. Decided March 4, 1922.*

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Rates on rough steel shafting in carloads from Camden, N. J., Buffalo, N. Y., Titusville and Nicetown, Pa., and Gary, Ind., to Portland, Oreg., and Tacoma, Wash., found unreasonable. Reparation awarded.

*Wm. C. McCulloch and Rogers MacVeagh* for complainants.

*R. H. Culbertson* for interveners.

*John F. Finerty, H. A. Scandrett, J. M. Souby, W. A. Robbins, Ben C. Dey, and Fred W. Heid* for defendants.

#### REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions to the examiner's proposed report were filed by the defendants and the case was orally argued before us.

Complainant corporations, Northwest Steel Company and Columbia River Shipbuilding Corporation, were engaged at Portland, Oreg., during the period covered by the complaint, in the construction of steel ships for the United States Shipping Board, Emergency Fleet Corporation. The complaint filed November 27, 1920, alleges that the rates charged on 25 carload shipments of "steel forgings" from Camden, N. J., Buffalo, N. Y., and Gary, Ind., to Portland during the period from July 14, 1918, to September 6, 1919, were unjust and unreasonable to the extent that they exceeded certain commodity rates subsequently established. The complaint was orally amended at the hearing to include additional shipments. An intervening petition filed at the hearing by the Todd Dry Dock & Construction Corporation, United States Navy Department, and United States Shipping Board, Emergency Fleet Corporation, attacks the rates charged on shipments of similar commodities moving during the same period from Nicetown and Titusville, Pa., to Tacoma, Wash. Reparation is asked by complainants and interveners. Rates will be stated in amounts per 100 pounds.

Complainants' shipments moved over the defendant carriers' line and consisted of rough-turned solid forged-steel shafting of three distinct types known as thrust, line, and propeller or tail shafts. The thrust shafts were 9 feet long and weighed approximately 8,500 pounds each. They had a flange turned on one end and, at about the middle, several smaller flanges or collars. The line shafts were 22.5 feet long, weighed approximately 12,500 pounds each and had flanges turned on both ends. The propeller or tail shafts were 17 feet long with a flange turned on one end and tapered at the other end. They weighed approximately 9,000 pounds each. The specifications under which the shafting was manufactured provided that it should be rough turned before shipment to within one-eighth or one-sixteenth inch of final dimensions. The specifications were largely disregarded by the manufacturers. Most of the shafting was not rough turned down as much as it should have been, and the rough turning was in substance merely a precautionary measure taken by the manufacturers to detect flaws which might otherwise go undetected at the mills and result in rejection at destination. The final turning which produced the finished shafting was done at destination at the expense of complainants. The shafting comprising interveners' shipments was similar to that comprising complainants' shipments, except that certain of it was hollow and of somewhat different dimensions. From a rate standpoint it is entitled to the same treatment.

Certain of the shipments were originally billed as rough forgings but the billing was changed en route or at destination by defendants' inspectors and charges were ultimately collected on most of the shipments on basis of the applicable fifth-class rates of \$2.375 from Camden and Nicetown, \$2.315 from Buffalo and Titusville, and \$2.19 from Gary. Other shipments charged class-A rates were overcharged. The current western classification provided that "shafts or shaftings, iron or steel, other than crank shafts, without cans, couplings or fittings, not key-leaved nor key-seated," would take fifth-class rates. Witnesses for defendants testified that in their judgment all of the shipments should have been charged class-A rates applicable to "shafts or shaftings, iron or steel, with couplings only attached." The articles shipped do not fall within this description. While they had flanges which were used in bolting them together to make the assembled shafts, these flanges were not couplings as that term is used in the classification. The term "coupling" is not specifically defined in the classification but the manner in which it is used therein signifies that it is a separate article and not an integral part of one of the articles that are to be coupled together. Furthermore, some of the thrust shafts had collars turned upon

them, whereas the class-A rating applies on shafting with couplings only attached.

The articles shipped were not rough forgings as contended by complainants and interveners. While not finished shafting they had progressed in manufacture beyond the forging state and were cognizable as shafting.

Defendants contend that class-A rates would have been reasonable to apply on this traffic. In the western classification many kinds of finished machinery and parts are rated class A, but this rating does not usually apply to unfinished material or parts. Many finished iron and steel articles of greater bulk and more susceptibility to damage contemporaneously moved under commodity rates as low or lower than the rates contended for by complainants.

The following table sets forth some of these rates to Portland, Oreg.:

Item.	From Camden, N. J.	From Buffalo, N. Y.	From Gary, Ind.
Forgings, n. o. s., not otherwise finished than being drilled with bolt holes.....	\$1.375	\$1.25	\$1.125
Shafting, plain.....	1.375	1.25	1.125
Railway supplies, including locomotive axles, journal or oil boxes, car journal brasses, and switch stands.....	1.69	1.565	1.44
Railway supplies, axles, wheels, also axle forgings.....	1.25	1.125	1.00
Rails and crossties.....	1.375	1.25	1.125
Structural iron, including plates, No. 11 and heavier, bars, beams, and columns.....	1.375	1.25	1.125
Wrought iron or steel pipe.....	1.375	1.25	1.125
Axles for non-self-propelling vehicles (finished).....	1.69	1.565	1.44
Water gates, fire hydrants, and fire plugs.....	1.375	1.25	1.125
Bar iron.....	1.375	1.25	1.125

On December 31, 1919, defendants established commodity rates of \$1.69 from Camden and Nicetown, \$1.565 from Buffalo and Titusville, and \$1.44 from Gary on rough-turned unfinished line, thrust, and propeller or tail shafts. Conflicting reasons are assigned by the parties for this reduction in the rates. Complainants assert that it was because the fifth-class rates were unreasonably high for this class of traffic, while defendants contend that it was the result of representations of shipbuilding concerns on the Pacific coast that lower rates were necessary to enable them to continue operations in competition with shipbuilding concerns on the Atlantic coast and in Japan and that the reduction was in nowise an admission that the former rates were unreasonable.

Based on the actual weight of the shipments the rates charged produced average car-mile earnings of approximately 60 cents. The rates subsequently established would produce average car-mile earnings of approximately 45 cents. The average weight of the shipments was 73,500 pounds.



Certain of the shipments upon which complainants ask reparation were consigned to the United States Shipping Board, care of Northwest Steel Company or Columbia River Shipbuilding Corporation. Others were consigned to the United States Shipping Board, care of Smith & Watson. The latter operated the plant where the turning of the shafting was completed and were acting as agents of complainants in receiving the shipments. Complainants paid and bore the charges on the shipments covered by the complaint. Of the shipments covered by the intervening petition it was testified that the United States Navy Department bore the charges on the 11 originating at Nicetown and that the United States Shipping Board, Emergency Fleet Corporation, bore the charges on the 10 originating at Titusville.

We find that the rates assailed were unreasonable to the extent that they exceeded the commodity rates subsequently established; that the shipments were made as described; that complainants bore the charges on the shipments from Camden, Buffalo, and Gary; that the intervener United States Navy Department bore the charges on the shipments from Nicetown and that the intervener United States Shipping Board, Emergency Fleet Corporation, bore the charges on the shipments from Titusville; and that the respective claimants have been damaged to the extent of the difference between the charges paid and those which would have accrued at the rates herein found reasonable and are entitled to reparation with interest. Complainants and interveners should comply with rule V of the Rules of Practice.

COMMISSIONER DANIELS dissents.

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No. 11881.<sup>1</sup>

KRAUSS BROTHERS LUMBER COMPANY

*v.*DIRECTOR GENERAL, AS AGENT, ALABAMA &  
MISSISSIPPI RAILROAD COMPANY, ET AL.

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*Submitted November 22, 1921. Decided March 2, 1922.*

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Demurrage and reconsignment charges assessed on carload shipments of lumber reconsigned at Meridan, Miss., Jackson, and Chattanooga, Tenn., found illegal. Reparation awarded.

*Harry S. Elkins and Ross H. Johnson* for complainant.

*H. L. Walker, Alex. M. Bull, and John F. Finerty* for Director General of Railroads.

*H. L. Walker* for Mobile & Ohio Railroad Company.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

## BY DIVISION 2:

Exceptions were filed by the complainant and by the Director General of Railroads, as Agent, to the report proposed by the examiner, and the issues were orally argued.

Complainant is a corporation engaged in the wholesale lumber business, with its principal office at New Orleans, La. It alleges that defendants unlawfully collected demurrage and reconsignment charges on carload shipments of lumber, shipped between November 1, 1917, and January 12, 1918, originally billed to Meridian, Miss., Jackson, and Chattanooga, Tenn., and reconsigned at those points to numerous destinations north and east thereof. Reparation only is sought.

The lumber was loaded at mills with which complainant had contracts, located at various points in Mississippi, Alabama, Louisiana, and Texas. The shipments moved into Meridian and Jackson over the Mobile & Ohio and into Chattanooga over the Alabama Great Southern. Most of them were placed in transit before being sold, so that complainant did not know the ultimate destination at the time they were started. Prior or subsequent to arrival at the recon-

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<sup>1</sup> This report also embraces No. 11881 (Sub-No. 1), *Same v. Director General, as Agent, Alabama, Tennessee & Northern Railroad Corporation, et al.*

signing points the lumber was sold to purchasers at points in Pennsylvania, Kentucky, New Jersey, West Virginia, Ohio, Indiana, and New York, and orders were transmitted to defendants directing reconsignment to the latter points. These orders defendants either refused to accept or in any event to comply with immediately, because embargoes were in effect against the points of destination from the original points of shipment and from the reconsigning points when the shipments originated. Demurrage was assessed for the resulting detention of the cars. In some instances reconsignment charges also were collected, which defendants admit was done without tariff authority. Some of the lumber was unloaded and stored at the reconsigning points, but most of the shipments were held in the cars and moved to destinations as the embargoes were lifted from time to time. These embargoes were brought about by severe congestion of traffic throughout the east during the period in question and were constantly being modified, canceled, and restored to meet particular emergencies.

Complainant does not question the reasonableness or necessity of the embargoes, but contends that as defendants' tariffs contained no provision against reconsignment to an embargoed point, detention of the cars was due to defendants' inability to fulfill the obligations imposed by the tariffs, and that the charges were therefore illegal. On January 13, 1918, rules became effective prohibiting reconsignment when in conflict with embargoes.

Defendants insist that complainant knew before the shipments were tendered that embargoes were in effect throughout the territory in question, and as shipments could not have been made either from the original points or locally from the points of reconsignment, billing of the shipments to the latter points was for the purpose of evading and nullifying the embargoes. Complainant admits it knew that embargoes were in effect generally throughout the territory in question, but states that since the final destinations were not known at the time shipments were started it could have had no knowledge that they were under embargo. It had been complainant's practice for years to reassign at these same points, and it disclaims any intention on its part to evade the embargoes.

We have repeatedly held that when tariffs contain no restriction against reconsignment to embargoed points, demurrage charges may not be assessed for the car detention resulting therefrom. *Reconsignment Case*, 47 I. C. C., 590, 634; *Wood v. N. Y., P. & N. R. R. Co.*, 53 I. C. C., 183; *Atlantic Lumber Co. v. N. Y., P. & N. R. R. Co.*, 57 I. C. C., 129.

Defendants admit that demurrage should not be assessed if the final destinations were not under embargo when the shipments left

the point of origin, but contend that if the points of final destination were under embargo at the time the shipments started and at the time of reconsignment the carriers are no more required to reassign to such points than to accept the shipments at the points of origin. They argue that since the right of reconsignment attaches as of the date of shipment, even if the order be given subsequently, and since there was no obligation to accept the shipments at points of origin on account of the embargoes, there was likewise no obligation to reassign. The obligation to accept articles tendered for transportation is governed by general principles of law, while the obligation to reassign is determined by rules lawfully on file with us. The right to refuse shipments temporarily for good cause by the establishment of embargoes, which are not required to be filed with us, is recognized. The right to reassign depends entirely upon the construction of rules, which are required to be filed in the same manner as rates, and if the carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for the detention of cars when it is not directly responsible for such detention and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier.

We find that the demurrage and reconsignment charges assailed were illegal; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged in the amount of the charges found herein to have been illegally collected; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

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INVESTIGATION AND SUSPENSION DOCKET No. 1405.  
COTTONSEED CAKE, MEAL, AND OIL FROM ARKANSAS,  
LOUISIANA, MISSOURI, OKLAHOMA, AND TEXAS.

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*Submitted November 25, 1921. Decided March 17, 1922.*

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1. Proposed increased rates on cottonseed and other vegetable cakes, meals, and oils, in carloads, from the southwest to certain Mississippi and Ohio river cities and points north and east thereof found not justified.
2. Proposed increased rates on the same commodities from the southwest to certain points in western territory found justified.

*James M. Chaney* for respondents.

*R. A. P. Walker, L. G. Macomber, Ed. P. Byars, W. C. Lipscomb, Wm. C. Ermon, W. E. Willey, R. N. Field, and H. P. Friedman* for protestants.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

*Esch, Commissioner:*

By schedules originally filed to become effective September 28 and October 15, 1921, respondents proposed to revise, as hereinafter explained, the commodity rates on cottonseed and other vegetable cakes, meals, and oils and articles taking the same rates, in carloads, from producing points in Missouri, Arkansas, Louisiana, Oklahoma, and Texas, hereinafter referred to collectively as the southwest, to Mississippi and Ohio river cities, points in defined territories east and north of those rivers, and a few points in western trunk line territory. Upon protests of the American Feed Manufacturers' Association, the Texas Cotton Seed Crushers' Association, the Interstate Cotton Seed Crushers' Association, and numerous other shippers and commercial organizations, the schedules were suspended until February 25, 1922. Respondents were permitted to withdraw certain increased rates on cotton seed from Missouri points named in the supplemental order of suspension herein. The effective dates of the other suspended schedules have been voluntarily postponed by respondents to April 25, 1922.

The suspended schedules are carried in agent F. A. Leland's tariffs I. C. C. Nos. 1469 and 1472, the former naming rates from Texas milling points and the latter rates from the other southwestern states. The principal rates in controversy are those applying

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on cottonseed cake, meal, and oil to Mississippi and Ohio river cities and to points in defined territories east and north of those rivers. There also are involved a few increased rates to widely scattered points in the western states, revised to restore relationships disturbed by the varying percentage increases of August 26, 1920, and to remove existing fourth section violations. The different vegetable cakes and meals usually are accorded the same rates, as are also the several kinds of oil. The rates on cottonseed products will be used to illustrate the general situation. Because of important differences between the adjustments on cake and meal and on oil, they will be considered separately. Rates will be stated in cents per 100 pounds.

#### RATES ON COTTONSEED CAKE AND MEAL.

For many years respondents have maintained on cottonseed cake and meal joint through rates applicable generally over all available routes from the southwest to so-called eastern basing points, including the seaboard cities and certain interior points such as Buffalo and Syracuse, N. Y., Pittsburgh, Pa., Huntington, W. Va., and the Virginia cities. Owing to failure to revise these joint rates which were originally constructed on basis of the lowest combination on any Mississippi or Ohio river gateway so that they would reflect certain changes made in the individual factors, and because of the fact that on August 26, 1920, the interterritorial joint rates were increased  $33\frac{1}{3}$  per cent while increases of 35 per cent to the Mississippi River,  $33\frac{1}{3}$  per cent to the Ohio River, and 40 per cent beyond were made in the intermediate rates, the existing joint rates are lower in most instances than the aggregate rates to and beyond any gateway. No joint rates are provided to the great majority of central and eastern points, the combination rates over the routes of movement being applicable. In numerous instances the sums of the intermediate rates exceed joint rates to farther distant points in contravention of the fourth section. Furthermore, there is no tariff authority for applying the joint rates at stations ordinarily grouped with the basing points.

By the suspended schedules respondents have undertaken to cancel the joint through rates to eastern basing points and to provide joint rates to substantially all points east of the Indiana-Illinois state line on basis of the lowest combination on any Mississippi or Ohio river gateway. To that end proportional rates are provided from the river crossings for use in connection with the local or proportional rates up to the rivers in constructing joint rates from the southwest to principal consuming centers of the north and east. By reference

to the eastbound guide books of the eastern lines in connection with the through rates so constructed, a basis is provided for joint rates to all points taking the same rates or arbitraries higher or lower. The proportional rates applicable east of the gateways are said to be the equivalent of the corresponding local rates. Subject to the exceptions of individual lines, it is provided that the lowest resulting through rates via any gateway will apply over all available routes.

Substantial increases, hereinafter described, also are proposed in the local and proportional rates on cake and meal from Texas up to certain of the river crossings. Except to points grouped with and taking the rates applicable to St. Louis, Mo., Chicago, Ill., and Louisville, Ky., combination rates are left in effect from Texas to substantially all points west of the Buffalo-Pittsburgh group. To consuming points in central territory not affected by the adjustment to destination basing points, respondents have undertaken to publish through rates based on combinations of locals from the other southwestern states.

The majority of the Texas mills are located in Texas common-point territory; others take rates made differentially higher or lower than the common-point basis. The common-point rates will therefore be used to illustrate the adjustment from Texas. The following table shows the existing and suspended rates on cottonseed cake and meal from Texas common points to the principal river crossings and the increases proposed:

Texas common points to—	Present.	Proposed.	Advance.
St. Louis, Mo.:	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Local.....	50.5	50.5	.....
Proportional <sup>1</sup> .....	42.5	45	2.5
Cairo, Ill.:			
Local.....	42.5	50.5	8
Proportional.....		43.5	1
Memphis, Tenn.....	42.5	42.5	.....
Louisville, Ky.....	46.5	56	9.5

<sup>1</sup> Applicable also to East St. Louis and east-bank Mississippi River crossings north thereof to and including East Dubuque, Ill.

The proportional rates to Cairo and East St. Louis are restricted in their application to shipments destined to points east of the Indiana-Illinois state line. To most of the consuming points in central and eastern territories the lowest combination rates from the southwest apply through one or the other of the gateways named, and the rates up to those crossings are the controlling factors in the adjustment of through rates.

Respecting the increase of 9.5 cents to Louisville, respondents assert that commodity rates to that crossing from the southwest usually are made differentially higher than the basic St. Louis rates, or by

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combination on that crossing, and that the increase is proposed for the purpose of placing the Louisville rate upon the proper level as compared with the rate to St. Louis. While 4 cents under the rate for delivery within the St. Louis group, the current rate to Louisville is 4 cents higher than that to St. Louis and east-bank Mississippi River crossings north thereof on shipments destined east of the Indiana-Illinois state line. The consumption of cake and meal at Louisville is negligible, and the rate to that gateway is seldom if ever used except as a factor in through rates to points beyond. Protestants therefore urge that it is essentially a proportional rate and should be compared with the proportional rate, rather than with the local rate, to St. Louis in considering the question of a proper relationship.

The history of the St. Louis-Louisville adjustment discloses that on September 15, 1897, rates of 25 cents to St. Louis and 28 cents to Louisville were established from Texas common points. On December 2, 1911, the rate to St. Louis proper was increased to 30 cents and the 25-cent rate was retained for proportional application only. No corresponding change was made in the rate to Louisville. Except for the general percentage increases of June 25, 1918, and August 26, 1920, the latter rate has not been disturbed since its establishment more than 24 years ago. The existing rates to St. Louis represent those made effective December 2, 1911, plus the subsequent general increases. No reasons are stated for the 5-cent increase to St. Louis proper. Obviously the carriers were thus enabled to augment their revenues on the substantial movement to St. Louis and points grouped therewith without affecting the adjustment of through rates to central and eastern territories. Protestants suggest that the failure to correspondingly increase the rate to Louisville probably was influenced by the insignificant movement to that point. The proportional rate of 42.5 cents to St. Louis and the 46.5-cent rate to Louisville reflect the relationship originally established between the two crossings. It is the rate to St. Louis proper which appears to be improperly aligned.

Respondents also point out that the rate on copra cake and meal from Texas common points to Louisville is 9 cents higher than that on cottonseed cake and meal. It is testified that shippers have complained of this discrepancy and that the proposed increase will correct it. The usual method of making rates on copra cake and meal is to apply the cottonseed cake and meal rates. Respondents would reverse this general practice and bring the cottonseed cake and meal rate up to the level of that on copra products. Moreover the Texas mills have discontinued the manufacture of copra products and the copra cake and meal rate is seldom used. In justification



of the 8-cent advance to Cairo proper it is testified that Cairo usually takes the St. Louis basis of commodity rates from and to points in Texas, and that the proposed rate places cake and meal on the normal basis.

Respondents contend that the normal and logical basis for through rates from the southwest to central and eastern territories is the full Mississippi River combination, but they state that the proposed increased proportional rates to St. Louis and Cairo were found necessary in order to equalize, as far as possible, the combinations through the several gateways. The following examples are illustrative of the effect which those changes and the increase to Louisville would have upon combination rates, and consequently upon joint rates based thereon, to important eastern markets:

Texas common points to—	Memphis combination.	East St. Louis and Cairo combination.		Louisville combination.	
		Present.	Proposed.	Present.	Proposed.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Boston, Mass.....	90	86.5	89	85.5	95
New York, N. Y.....	86.5	84.5	87	83.5	93
Philadelphia, Pa.....	83	82.5	85	81.5	91
Baltimore, Md.....	82	81.5	84	80.5	90

The present lowest combinations make on Louisville, the highest combination in each instance applying through Memphis. The increases in the factors up to the crossings will eliminate the combinations through East St. Louis, Cairo, and Louisville as bases for through rates to New York, Philadelphia, Baltimore, and points taking the same rates and will force the joint rates up to the higher Memphis combinations, which are not disturbed. To Boston the new East St. Louis combination, 1 cent less than the Memphis combination, will make the through rate. The described revision of rates to St. Louis, Cairo, and Louisville will operate to increase the lowest combinations to practically all points throughout the destination territory involved. It follows, therefore, that on cake and meal from Texas, respondents are not merely establishing joint rates to central and eastern territories based on the lowest combinations on any gateway but are first increasing the lowest combinations by equaling or exceeding the present highest combinations, and then are establishing joint through rates which reflect, in most cases, the existing highest combinations.

The following examples of rates on cake and meal show the present and proposed adjustments of through rates from Texas to points in the defined territories. There are indicated, (1) the points to which joint through rates apply; (2) the actual increases proposed therein; (3) the existing and revised lowest combinations and the gateways

on which they are made; and (4) the extent to which the lowest combinations are advanced.

Texas common points to—	Present.	Proposed.	Increase.
<b>Boston, Mass.:</b>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Joint commodity rate.....	80.5	89	8.5
Lowest combination.....	85.5	89	3.5
<b>New York, N. Y.:</b>			
Joint commodity rate.....	77.5	86.5	9
Lowest combination.....	83.5	86.5	3
<b>Philadelphia, Pa.:</b>			
Joint commodity rate.....	74	83	9
Lowest combination.....	81.5	85	3.5
<b>Baltimore, Md.:</b>			
Joint commodity rate.....	72.5	82	9.5
Lowest combination.....	80.5	83	2.5
<b>Richmond, Va.:</b>			
Joint commodity rate.....	72.5	76.5	4
Lowest combination.....	76.5	76.5	.....
<b>Buffalo, N. Y.:</b>			
Joint commodity rate.....	64	71.5	7.5
Lowest combination.....	70	71.5	1.5
<b>Huntington, W. Va.:</b>			
Joint commodity rate.....	65.5	72.5	7
Lowest combination.....	70	72.5	2.5
<b>Toledo, Ohio:</b>			
Lowest combination.....	63.5	66	2.5
<b>Indianapolis, Ind.:</b>			
Lowest combination.....	58.5	61	2.5
<b>Chicago, Ill.:</b>			
Joint commodity rate.....	61	61	.....

<sup>1</sup> Louisville combination.

<sup>2</sup> East St. Louis combination.

<sup>3</sup> Memphis combination.

<sup>4</sup> Cairo combination.

The suspended schedules would effect no increases on cake and meal from Arkansas, Missouri, Louisiana, and Oklahoma, to the river crossings or to the large number of central and eastern points now taking combination rates. The sole purpose of the readjustment from these states is to bring up the joint basing-point rates to the level of the current lowest combinations, and, by reference to the eastbound guide books of the eastern lines, to provide a basis for joint rates to all points named therein as taking rates the same as or differentially higher or lower than the destination basing-point rates. Generally stated, the suspended rates from Arkansas, Louisiana, and Oklahoma to points in the defined territories now enjoying joint rates less than lowest combinations involve increases equivalent to (1) those made in the factors east and north of the rivers under authority of *The Five Per Cent Case*, 31 I. C. C., 351; 32 I. C. C., 325; and *The Fifteen Per Cent Case*, 45 I. C. C., 303, which increases appear not to have been incorporated in the joint rates, and (2) the difference between the 33½ per cent increase of August 26, 1920, in the interterritorial rates and the contemporaneous increases in the factors up to and east of the Mississippi River gateways, Cairo and north, of 35 per cent and 40 per cent, respectively. Consuming points in the destination territory involved now taking straight combination rates will receive the benefit of joint rates based on the lowest combinations through any crossing and applicable generally over all routes. Reductions of 0.5 to 1 cent per 100 pounds will be effected

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from certain Arkansas points to a few seaboard cities to which rates reflecting the Cairo combination are maintained. The reductions are due to the fact that on August 26, 1920, the rates east of Cairo were advanced 40 per cent, whereas those east of Memphis sustained an increase of only 33½ per cent, with the result that the lowest combinations now make on Memphis.

Respondents exhibit the present and proposed rates on cake and meal from representative producing points in Arkansas, Louisiana, and Oklahoma to consuming points throughout central and eastern territories, typical examples of which are shown in the following table:

To—	From Little Rock and Pine Bluff, Ark.			From Fort Smith, Ark.			From Alexandria, La.		
	Pres-ent.	Pro-posed.	Ad-vance.	Pres-ent.	Pro-posed.	Ad-vance.	Pres-ent.	Pro-posed.	Ad-vance.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New York, N. Y.....	58.5	57.5	11	65.5	64.5	11	69.5	74	4.5
Binghamton, N. Y.....	53.5	53	10.5	60	60	.....	64	69.5	5.5
Albany, N. Y.....	56.5	56	10.5	63.5	63	10.5	68	73.5	5.5
Buffalo, N. Y.....	40	44	4	46.5	51	4.5	56	61.5	5.5
Baltimore, Md.....	53.5	53	10.5	60	60	.....	64	71	7
Columbus, Ohio.....	34	42	8	42.5	48.5	6	50.5	57	6.5
Dayton, Ohio.....	42	42	.....	46.5	46.5	.....	55	55	.....
Indianapolis, Ind.....	37.5	37.5	.....	41.5	41.5	.....	50	50	.....
Terre Haute, Ind.....	35	35	.....	38	38	.....	46.5	46.5	.....

To—	From Oklahoma City, Okla.			From Muskogee, Okla.		
	Pres-ent.	Pro-posed.	Ad-vance.	Pres-ent.	Pro-posed.	Ad-vance.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
New York, N. Y.....	77.5	78	0.5	64.5	71	6.5
Binghamton, N. Y.....	73.5	73.5	.....	67	65.5	1.5
Albany, N. Y.....	76	76.5	0.5	63	69	6
Buffalo, N. Y.....	64	64.5	0.5	51	56.5	5.5
Baltimore, Md.....	72.5	73.5	1	59	68	7
Toledo, Ohio.....	59.5	65.5	6	46	52	6
Columbus, Ohio.....	59.5	64	4.5	46	52	6
Dayton, Ohio.....	57.5	57.5	.....	50	50	.....
Indianapolis, Ind.....	52.5	52.5	.....	45	45	.....
Terre Haute, Ind.....	49	49	.....	41.5	41.5	.....

<sup>1</sup> Reduction.

The normal annual production of cotton seed in the United States is about 5,000,000 tons, based on a ratio of one-half ton of seed per bale of cotton. The production is approximately equally divided between the cotton-producing states east of the Mississippi River and those on the west. One million six hundred thousand tons, or nearly one-third of the total tonnage, is produced in the state of Texas alone. The cottonseed cake manufactured by the 240 mills in Texas last season totaled 675,000 tons. Of this amount 135,000 tons were exported to foreign countries; 270,000 tons were consumed locally or shipped to western destinations; and about the same amount moved

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eastward to the territory involved in this proceeding, where the cake is used largely as an ingredient in mixed feeds for live stock. There has been a gradual increase in the consumption in eastern territory, the movement having been especially large in the last two years. Protestants testify, however, that it is becoming more and more difficult to market cottonseed cake in competition with local feeds, such as corn, oats, and barley, because of declining prices of the last-named products and predict that the proposed rates would destroy their market in the east.

Respondents say that the proposed revision was undertaken principally at the request of millers and dealers at interior eastern points to which present combination rates exceed the joint rates to the more distant basing points, and that as reductions in the rates to the interior points would curtail revenues, it was considered advisable to raise the joint rates to the same basis as those made by combination. In support of their action they rely on our decision in *Substitution for Increases in Rates*, 61 I. C. C., 518, in which we permitted increases in certain rates between the southwest and points in eastern and southern territories to equalize them with the lowest combinations of rates to and from river gateways on which they were originally based, the parity having been destroyed in applying the increases following *Increased Rates, 1920*, 58 I. C. C., 220. The instant case differs from that cited in that respondents here propose not only to equalize the joint rates with the combinations but also to make substantial increases in several of the factors from Texas to the river crossings. The reasons given by respondents for these increases have already been stated and in our judgment do not justify the materially higher through rates which would be produced thereby.

For purposes of comparison protestants submit a scale of rates equivalent to that which was established from points in Oklahoma to points in Kansas, Missouri, Nebraska, and a portion of Colorado, as a result of *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co.*, 39 I. C. C., 497, and 42 I. C. C., 571, raised to reflect subsequent general increases, and extended at the same rate of progression to a distance of 1,900 miles. They show that the use of this scale, either for entire distances to eastern destinations or to river crossings plus the current local rates beyond, would reduce the present rates. Protestants deny that the rates here considered should necessarily be based on combination to and from the river crossings and point to joint through rates on cement plaster, sulphur, peanuts, sugar, molasses, rice and rice products, wool hides, packing-house products, and other commodities now in effect from Texas to destinations in central and eastern territories which are

lower than the combinations. They state that the present rates on cottonseed products are unreasonably high and urge that we forthwith enter an order prescribing materially lower rates than are now in effect. Even though it be assumed that the scope of this proceeding is broad enough to warrant relief of that character, the record is insufficient to indicate the basis upon which such an important readjustment should be made. While respondents admit that there are inconsistencies and illegalities in the present rates which the suspended schedules were designed to correct, the question we are now primarily concerned with is whether respondents' proposed revision will result in unreasonably high rates, and the showing made by the carriers in that respect does not sustain the burden of proof imposed on them by law.

We accordingly find that respondents have failed to justify the proposed increased rates on cotton seed and other vegetable cakes and meals from the southwest to the river crossings and points in central and eastern territories. They will be required to cancel such rates.

#### RATES ON COTTONSEED OIL.

At present there are specific rates on cottonseed oil to eastern seaboard cities, a few interior eastern points, to points in the Buffalo-Pittsburgh zone, and a few places in central territory, which originally purported to be the same as the lowest combination of locals, but are now lower. These rates are applicable via all river crossings. To other points east of the Indiana-Illinois state line the rates now in effect are the combination of locals over the route of movement. It is proposed to establish specific joint rates to practically all consuming points in the territory mentioned on the basis of the existing lowest combinations to apply via all gateways. Among both the present and proposed rates, however, there are many which exceed the lowest combination, as shown in the following table:

From Texas common points to—	Present.	Proposed.	Lowest combination.		
			To base point.	Beyond.	Total.
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
Indianapolis, Ind.....	78	86	64	11.5	75.5
Terre Haute, Ind.....	80	91	68.5	12.5	81
Baltimore, Md.....	83.5	94	68.5	25	93.5
Fall River, Mass.....	116.5	126.5	68.5	52	120.5
Berlin, N. H.....	116.5	126.5	50.5	58.5	107
Bayonne, N. J.....	94	99.5	64	35	99
Newark, N. J.....	100.5	109	50.5	58.5	104
Albany, N. Y.....	116	118.5	64	34.5	98.5
New York, N. Y.....	98	99.5	64	35	99
Schenectady, N. Y.....	109.5	118.5	64	34.5	98.5
Providence, R. I.....	97.5	104.5	64	38.5	102.5
Rolet, Va.....	88.5	94	68.5	25	93.5

The principal point of consumption for vegetable oils is Chicago, but various eastern cities are also important markets. It was testified that very little cottonseed oil moved from the southwest to points east of Chicago since the general increases made under authority of general order No. 28 and *Increased Rates, 1920, supra*. Protestants also refer to the scale of rates on cottonseed oil prescribed in *Oklahoma Cottonseed Crushers' Asso. v. M., K. & T. Ry. Co., supra*, extended at the same rate of progression to 2,025 miles as raised by subsequent general increases, and show that the present rates to the river crossings from Texas points are higher than rates under that scale for the same distances. Respondents offered no evidence in support of the proposed rates on cottonseed oil from the southwest to central and eastern points, and we find that those rates have not been justified. Their cancellation will be ordered.

RATES ON COTTONSEED PRODUCTS TO WESTERN POINTS.

Such increases in rates on cottonseed products as are proposed to western points are not involved in the revision of rates to river crossings and territory north and east thereof. They were not opposed at the hearing and we find that they have been justified. As our suspension orders have expired no further order is necessary to permit such rates to take effect.

66 I. C. C.

No. 12139.

AMERICAN AGRICULTURAL CHEMICAL COMPANY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted November 25, 1921. Decided March 1, 1922.*

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Rate applicable on cottonseed cake, in carloads, from Savannah, Ga., to Alexandria, Va., found unreasonable. Reparation denied. Complaint dismissed.

*E. B. Leiby and A. J. Whitman* for complainant.

*John F. Finerty and John C. Brooke* for defendant.

REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS AITCHISON, ESCH, AND CAMPBELL.

BY DIVISION 2:

Exceptions were filed by complainant to the report proposed by the examiner and the case was argued orally. We have reached conclusions differing from those recommended by the examiner.

Complainant, a corporation, by complaint filed January 25, 1921, alleges that the charges collected on 16 carloads of cottonseed cake, shipped in January, 1918, from Savannah, Ga., to Alexandria, Va., were unreasonable and unlawful. We are asked to award reparation. Rates will be stated in amounts per net ton.

The shipments, aggregating 597.8 net tons, were routed and moved over the Southern, a distance of 637 miles. Charges were collected on the basis of a rate of \$6.10. The applicable rate was \$5.60, composed of a commodity rate of \$3.60 to Lynchburg, Va., and a similar rate of \$2 beyond. The shipments were overcharged 50 cents a ton. Contemporaneously, there was in effect between the points named a rate of \$4, made up of a rate of \$2.80, applicable by way of the Southern to Richmond, Va., and \$1.20 over the Richmond, Fredericksburg & Potomac beyond, a distance of 654 miles. On March 31, 1918, a rate of \$4 was established over the route over which the shipments moved.

Southern routing only was named in the bills of lading through an error of the consignor, but complainant contends that as the carriers comprised in the above-described routes were under federal control the applicable rate was unreasonable to the extent it exceeded the \$4 rate contemporaneously in effect by way of Richmond. As

66 I. C. C.

evidence of unreasonableness, complainant submitted a number of comparative rates from southeastern points of origin to Richmond, Alexandria, and Washington, D. C., which returned an average yield of 6.9 mills per ton-mile. The applicable rate yielded 8.8 mills, while the rate sought and subsequently established yielded 6.3 mills.

In southern classification territory cottonseed cake is accorded fertilizer rates. Witness for defendant refers to the low measure of the fertilizer rates as applied to this commodity, and submitted comparisons to show that both factors of the combination rate applicable over the route of movement were not unreasonable. Defendant also relies upon the fact that the shipments moved over the higher-rated route because of the routing instructions.

At the time of movement the carriers were operated under a unified and coordinated national control, and not in competition. In view of this fact, we have held in cases where different rates were in effect over two routes between the same points that if the routes are practically the same in length and subject to the same transportation conditions, it was unreasonable for the Director General to maintain a higher rate over one route than contemporaneously applied over the other. *Gill v. Director General*, 59 I. C. C., 119; *Barrett Co. v. Director General*, 61 I. C. C., 401. The record is devoid of any evidence to justify the maintenance during federal control of a higher rate over the route these shipments moved than contemporaneously applied for the somewhat longer haul by way of the Southern through Richmond. Accordingly, we conclude that the applicable rate was unreasonable to the extent that it exceeded \$4 per net ton.

Reparation must be denied. The shipments were consigned by the Buckeye Cotton Oil Company to itself, notify the Alexandria Fertilizer & Chemical Company. The latter company paid the freight charges. Witnesses for complainant state that the shipments were bought of the Buckeye Cotton Oil Company by the Palmetto Guano Corporation through a broker at a stated price f. o. b. Savannah; and that the Palmetto Guano Corporation and the Alexandria Fertilizer & Chemical Company are "subsidiaries" of the complainant. The fact that one company may be a subsidiary of another does not *ipso facto* entitle the latter to bring an action in its own name for a damage suffered by the former. The Alexandria Fertilizer & Chemical Company and the Palmetto Guano Corporation are not parties complainant, and no assignment of claim or power of attorney from either of these companies was submitted. The American Agricultural Chemical Company asks that reparation be awarded



to it alone, and not as agent. The record does not clearly show who finally bore the unreasonable charges. The complainant was not a party to the transportation records; but even in that case, it must appear that it suffered the damages claimed before we are justified in entering an order of reparation in its favor. *Oden & Elliott v. S. A. L. Ry.*, 57 I. C. C., 698. Any outstanding overcharges should be refunded promptly, with interest, to the party properly entitled thereto. The complaint will be dismissed.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1451.  
DEPOSIT OF \$10 FOR EACH LIVE-POULTRY CAR  
ORDERED.

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*Submitted February 9, 1922. Decided March 11, 1922.*

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Proposed schedules which would require a deposit of \$10 for each live-poultry car ordered found not justified in part and ordered canceled without prejudice to the filing of new schedules modified in accordance with suggestions in the report.

*Edward D. Mohr, J. K. Dent, and W. L. Nichol* for respondents.  
*E. B. Wilkinson* and *W. F. Blanchfield* for Live Poultry & Dairy Shippers' Traffic Association.

*W. M. O'Keefe* for National Poultry, Butter & Egg Association.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective December 14, 1921, respondents propose to require shippers to deposit \$10 for each live-poultry car ordered, such deposit to be refunded only if loading of the car be commenced within 48 hours following its placement. The rules proposed by the Louisville & Nashville, which are practically identical with those proposed by the other respondent, read:

When a shipper orders a Live Poultry Transit Company car, he shall be required to deposit with the Agent of this Company with whom the order is placed the sum of ten dollars (\$10) for each and every car ordered.

If the loading of the car ordered is commenced within forty-eight hours following its placement, then the amount deposited on that particular car shall be refunded to the shipper.

If the loading of the car is not commenced within forty-eight hours following the placement, then the amount deposited on that particular car shall be retained by this Company.

Should a shipper order a car to be placed for loading on a specified date and for the Carrier's convenience the car is placed or made available for loading prior to the date specified by the shipper, the word "placement" as used above shall be construed as meaning the date for loading as specified by the shipper.

The provisions of this rule are in addition to any charge which may accrue for demurrage in accordance with tariffs lawfully on file with the Interstate Commerce Commission.

Upon protest of the Live Poultry & Dairy Shippers' Traffic Association the operation of the schedules was suspended until May 13, 1922.

Respondents say that trouble has been experienced with shippers of live poultry because of their failure promptly to load cars placed upon their orders. There are shippers, including the so-called itinerant buyers, who make a practice of ordering cars without having reasonable assurance that a load will be available for the cars when placed. The proposed rules are designed to discourage this practice and are not primarily revenue measures. During the period from January 1 to November 19, 1921, inclusive, 575 live-poultry cars were ordered by shippers on the Louisville & Nashville. Of these 45, or approximately 8 per cent, were not loaded at the point at which originally placed. Live-poultry cars are special equipment leased from private owners, and at times the supply is insufficient to meet the demand. The placing of these cars at points where loads are not secured adds to respondents' operating expenses and prevents the fullest use of the equipment. Respondents state that the trouble experienced with live-poultry cars has not existed with other classes of special equipment.

Protestant recognizes the desirability of curtailing abuses in the ordering of live-poultry cars but objects to the proposed rules for the following reasons: First, that they penalize shippers who are not at fault by requiring them to make the deposit and then await refund from the carrier; second, that they fix 48 hours as the time limit within which loading must commence after placement; third, that they make no provision for refund of the deposit where the failure to load is attributable to the failure of the carrier to place the car by the date wanted and the shipper has placed the order for the car sufficiently in advance of such date to enable the carrier to effect the desired placement; fourth, that they make no provision for refund of the deposit where the party originally ordering the car loads it at a point other than the original placement point and the carrier is required to perform no extra movement of the empty car by reason of the cancellation of the original order; fifth, that they make no provision for refund of the deposit where the order for the car is canceled prior to commencement of movement of the car under the order.

Respondents recognize the validity of protestant's second objection and have prepared and submitted the following rules which they are willing to publish in lieu of those under suspension:

(1) When a shipper orders a Live Poultry Transit Company car, he shall be required to deposit with the Agent of this Railway with whom the order is placed the sum of ten (\$10.00) dollars for each and every car ordered.

(2) The amount deposited on any particular car as required by Paragraph (1) will be refunded by the Agent of this Railway to the shipper making such deposit, under the following conditions: (a) If loading is commenced within forty-eight hours after placement. (b) If loading is not commenced within forty-eight hours after placement, but such shipper orders car held and ultimately loads it at the point originally designated.

(3) Where refunds are not specifically authorized in Paragraph (2), the amounts deposited as required by Paragraph (1) will be retained by this Railway.

(4) When a shipper orders a car placed for loading on a specified date, and, for this carrier's convenience, the car is placed or made available for loading prior to that date, the word "placement" as used herein shall be construed as meaning the date for loading as specified by the shipper.

(5) All cars handled under this rule are subject to lawfully published demurrage rules and charges, which shall be in addition to the provisions of this rule.

The revised rules would result in refund of the deposit if the car is loaded at the point of original placement by the shipper ordering such placement and the car is held under demurrage on that shipper's order during the period intervening between the dates of placement and of loading. They do not meet the other objections advanced. Protestant urges that the rules should not inconvenience those who are not responsible for the abuses described. It contends that only those at fault should be penalized, but offers no substitute for the plan proposed by respondents nor does any other plan seem feasible. Protestant questions whether the percentage of cases in which cars have not been loaded upon placement is sufficiently high to justify a rule of the character proposed. We are of opinion that such percentage is sufficiently high to justify some action on the part of respondents to correct the evil and that rules of the character here under consideration, with proper modifications, will afford the right corrective.

It is the custom of live-poultry shippers to distribute handbills or posters in the country surrounding the station from which it is expected to ship stating that a buyer will be at that station on a certain day. The farmers in response to this advertising bring in their poultry which upon purchase is placed in the live-poultry cars. If the carrier fails to supply a car by the date specified, the prospective buyer ordinarily has no place to put the poultry and the farmers must take it back home or perhaps sell to a competitor. The rules should be modified to provide for refund of the deposit in cases where the shipper has ordered a car at least six days in advance of the placement date specified in the order and the carrier has failed to place the car by 7 a. m. of such specified placement date. We are further of the view that the proposed rules should be modified to meet protestant's fourth and fifth objections.

In addition to the objections stated, protestant contends that the proposed rules are unjust in that they make no provision for payment of damages to the shipper in cases where he suffers loss due to respondents' failure to place cars on the date specified by the shipper. The liability of carriers for general damages growing out of their failure to furnish cars is determinable by the courts. The law does not require them to define their liability by tariff publication. We have no jurisdiction to require carriers to establish reciprocal demurrage regulations.

We find that respondents have not justified the suspended schedules and an order requiring their cancellation will be entered, without prejudice to the filing, upon not less than five days' notice, of new schedules modified in the respects indicated.

63 I. C. C.

No. 12025.

CHICAGO ROLLER COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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Submitted November 30, 1921. Decided March 2, 1922.

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Official and western classification ratings on old printer's rollers and printer's roller cores not found unreasonable or otherwise unlawful. Complaint dismissed.

*John Andrew Ronan* for complainants.

*John F. Finerty* and *Royal McKenna* for Director General, as Agent.

*A. H. Greenly*, *H. C. Bush*, and *Robert W. Fyfe* for other defendants.

## REPORT OF THE COMMISSION.

DIVISION 2, COMMISSIONERS DANIELS, ESCH, AND CAMPBELL.

BY DIVISION 2:

No exceptions were filed to the report proposed by the examiner, but the case was orally argued.

Complainants are corporations engaged in manufacturing printer's rollers at various points in official and western classification territories. By complaint, filed December 9, 1920, they allege that the ratings under these classifications, applied by defendants to the transportation of less-than-carload shipments of old printer's rollers and printer's roller cores, were and are unreasonable, unjustly discriminatory, and unduly prejudicial. We are asked to establish a fourth-class rating, and to award reparation on shipments that have moved within the statutory period under rates governed by these classifications.

A printer's roller core is a machine-finished cylindrical iron or steel shaft fitted to rotate in a printing press. When covered with an elastic composition for holding and distributing ink to the face of the type, it is known as a printer's roller. After some months' wear the composition becomes nonserviceable and the old roller or core is returned to the roller manufacturer for re-covering. The ratings here brought under consideration are those applicable to such movements. Prior to the re-covering, the old composition is

stripped from the shaft, but as this is generally done by the roller manufacturer, the movement in question is chiefly of the commodity known as old rollers, as contradistinguished from that known as cores. Prior to the consolidated classification, the ratings applied less than carload, while under that classification they apply any quantity; but apparently the movement is never in carload quantities. Neither the volume of the movement nor the weight of an average shipment is disclosed.

Prior to July 1, 1910, both printer's rollers and printer's roller cores were rated fourth class in the western classification. On that date the specific items for both articles were eliminated, and ratings of second class, k. d., in boxes, and first class, k. d., in pieces, provided on machinery, n. o. s., were applied on cores, while rollers were classified as printing and printer's rollers, n. o. s., first class; boxed, second class. On February 14, 1913, printer's roller cores were included under the item "cores, iron or steel, n. o. i. b. n., in packages or loose" and accorded fourth class. This rating was maintained until consolidated classification No. 1 became effective, December 30, 1919, when the present rating of third class was established on printer's roller cores (printer's roller stocks), iron or steel, in boxes or crates. The rating on the rollers was not changed until September 10, 1920, when third class was provided on "Rollers: Printer's, elastic composition covered: Old, worn out, in boxes or crates."

Since January 1, 1909, printer's rollers have been rated third class in the official classification, though prior thereto the rating was second class. For many years prior to December 30, 1919, printer's roller cores were transported as iron or steel cores, n. o. s., and accorded fourth class. On December 30, 1919, they were given a specific rating of third class, which is still in effect. It thus appears that third class now applies under both classifications to each of these commodities. In the southern classification the rating is and for many years has been fourth class. The present rating carried in the three major classifications on new printer's rollers, elastic composition covered, is second class, and complainants express satisfaction with that rating.

The shaft of a printer's roller varies from 6 to 90 inches in length, from 0.5 to 3 inches in diameter, and generally from 20 to 100 pounds in weight. Its serviceability as a roller core is from 10 to 30 years, and its value ranges from 25 cents to \$15. The composition matter stripped from old rollers, after extraction of the glycerine component, is used in the manufacture of fertilizer or for glue stock. According to complainants, the value of the old composition is about 6 cents per pound, but the average weight of such material on an old roller is not disclosed. The record, however, establishes that

there is no substantial difference in the transportation characteristics of the respective commodities, and neither is readily susceptible to damage in transit.

With respect to the second-class rating applied by western classification to old rollers prior to September 10, 1920, complainants point out that that classification contemporaneously maintained the same rating on new rollers, which are of greater value and more susceptible to damage in transit; also that prior to December 30, 1919, while old rollers were rated second class by western and third class by official classification, both classifications accorded a fourth-class rating to the cores and to old printer's elastic composition, the separate components of the rollers.

In support of the contention that the present rating of third class on both rollers and roller cores is unreasonable, they refer to Illinois and Iowa classifications as according a fourth-class rating on each of the commodities in question. Complainants also cite a number of commodities which are accorded that rating by the western and official classifications, but from a classification standpoint these commodities, with the exception of vehicle axles of certain specifications, are not analogous to printer's rollers or cores.

Defendants contend that the reduction to third class in the rating on rollers in western territory, effective September 10, 1920, constituted a departure from the classification principles generally observed by western carriers, in that a rating lower than on the complete article, the press, was accorded one of the parts. They testify that this reduction was made to bring about uniformity with the rating in official classification territory and was also prompted by a desire to give proper recognition to the differences in value between rollers rendered unserviceable, on the one hand, and new or refitted for service, on the other. The disparity in these values is not disclosed, but as the new composition used for covering is said to be worth about 60 cents per pound, it may be measured to an extent by the excess in value of the new composition over that which is removed. With respect to the cores, defendants say that no significance should attach to the fourth-class rating at one time applicable, as the descriptive item under which it was published was intended to cover only cores of cheaper values, such as those used in the transportation of newsprint paper, which consists simply of pieces of iron pipe on which no machine work has been performed.

A less-than-carload third-class rating applies under western and official classifications on a number of commodities cited by defendants, such as iron or steel shafts of certain specifications, and automobile axle shafts, more nearly analogous to old printer's rollers or cores than the commodities referred to by complainant. It is their



contention that old rollers are now classified on the same basis with like or similar articles, and that the present rating, which is a differential of one class lower than applies on new rollers and one class higher than applies on steel bars or rods, the raw material from which the shafts are manufactured, represents a reasonable classification.

There is no definite showing upon this record that complainants made any shipments of old printer's rollers during the statutory period of limitations upon which they paid and bore the charges at the first-class or second-class rates under the western classification. Therefore, it is unnecessary to pass upon the reasonableness of the former ratings on such rollers in that classification.

We find that the present ratings assailed were not and are not unreasonable, unjustly discriminatory, or unduly prejudicial.

The complaint will be dismissed.

66 I. C. C.

No. 12177.  
BRITISH UNITED SHOE MACHINERY COMPANY,  
LIMITED,  
v.  
PENNSYLVANIA RAILROAD COMPANY.

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*Submitted January 31, 1922. Decided March 4, 1922.*

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Domestic demurrage charges accruing at Baltimore, Md., on eight cars of tack plate shipped from Vandergrift, Pa., to Baltimore, for export, but reconsigned to New York, N. Y., or Philadelphia, Pa., and exported from those ports, found not unreasonable or otherwise unlawful. Complaint dismissed.

*Otis Beall Kent* for complainant.

*Edwin A. Lucas* for defendant.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4.

Exceptions were filed by both complainant and defendant to the report proposed by the examiner and the case was orally argued before us.

Complainant, a subsidiary of the United Shoe Machinery Corporation, by complaint filed January 31, 1921, alleges that the domestic demurrage charges accruing on eight carloads of tack plate at Baltimore, Md., shipped from Vandergrift, Pa., to Baltimore, for export, two of which were reconsigned to New York, N. Y., and exported from that port in February, 1917, and six of which were reconsigned to Philadelphia, Pa., and exported from that port in March, 1917, are unreasonable, unjustly discriminatory, and unduly prejudicial. Reparation is asked on the shipments upon which the demurrage charges have been paid.

Defendant urges that the claim is barred by the statute of limitations. As section 206(f) of the transportation act, 1920, provides that the period of federal control shall not be computed as part of the periods of limitation in claims for reparation to the Commission for causes of action arising prior to federal control, the claims covering the shipments herein are within our jurisdiction.

The principal finding in *United Shoe Machinery Corp. v. Director General*, 55 I. C. C., 253, was that the domestic demurrage charges and not the export storage charges were legally applicable

on the two carloads exported from New York. No evidence was offered in that case bearing on the reasonableness of the applicable charges. The circumstances surrounding the accrual of the demurrage charges on the shipments exported from New York and Philadelphia are identical. The material facts are stated in full in the case cited. There is no controversy as to the time of detention of any of the shipments. It is complainant's only contention that the demurrage charges should not exceed those which would have accrued had the shipments been exported from Baltimore.

Complainant compares the demurrage rules assailed with the rules permitting longer free time and lower charges applicable under the export tariff, and points out that the service actually performed by defendant was not any greater or more expensive to defendant than it would have been had the shipments been exported from Baltimore. The detention of the shipments at Baltimore was due to the fact that the vessel for which they were originally intended was commandeered by one of the nations then at war. Complainant contends that the equipment could not have been released any more promptly under the domestic demurrage charges than under the export charges, as the delay in securing space in other vessels was due to causes beyond its control.

On November 29, 1916, in Investigation and Suspension Docket No. 966, we authorized defendant and the carriers generally throughout the country to establish charges for detention of domestic shipments after the expiration of free time similar in amounts to those assailed; that is, \$1 for the first, \$2 for the second, \$3 for the third, and \$5 for the fourth and each succeeding day. In *Lowry Lumber Co. v. Director General*, 58 I. C. C., 113, and *Heid Brothers v. E. P. & N. E. R. R. Co.*, 55 I. C. C., 416, these charges were found not unreasonable or otherwise unlawful, and the evidence and contentions of complainant herein afford no basis for a different conclusion.

We find that the charges assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

66 I. C. C.

No. 12148.

ANDREW DUTTON COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, ATCHISON, TOPEKA &  
SANTA FE RAILWAY COMPANY, ET AL.

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Submitted October 20, 1921. Decided March 7, 1922.

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Rate on imported kapok, in carloads, from San Francisco, Calif., to Chicago, Ill., New York, N. Y., and Boston, Mass., found unreasonable. Reparation awarded.

*Mason Manghum* and *W. H. Chandler* for complainants.

*John F. Finerty* and *Thomas M. Woodward* for Director General, as Agent.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendants to the report proposed by the examiner.

Complainant corporations are importers and dealers in upholstery goods and mattress supplies at Boston, Mass. By complaint filed January 25, 1921, they allege that the rates charged on 36 carloads of imported kapok shipped from San Francisco, Calif., to Chicago, Ill., New York, N. Y., and Boston, Mass., between July 16 and October 1, 1918, inclusive, were unreasonable and unduly prejudicial to the extent that they exceeded the import rate subsequently established. We are asked to award reparation. Rates will be stated in amounts per 100 pounds.

The shipments were imported through San Francisco and moved over the lines of defendant carriers by various routes. Two carloads were destined to Chicago, 2 to New York, and 32 to Boston. Charges were collected on the domestic third-class rates of \$3.065 to Chicago and \$3.315 to New York and Boston, minimum 20,000 pounds, which became applicable when the import rate of \$1.25 in effect prior to June 25, 1918, was canceled pursuant to general order No. 28 of the Director General of Railroads. On May 29, 1919, an import rate of \$1.565 was established from San Francisco to these destinations and reparation is sought to that basis. This rate represented an in-

66 I. C. C.

crease of 25 per cent over the rate in effect prior to June 25, 1918. Under the general increase of 1920 it became \$2.085, the present rate.

Kapok is a vegetable fiber, the product of trees in Java, and is similar in texture to cotton. It is used in filling mattresses and cushions, and during the war was used in life preservers. It is usually shipped compressed in bales, each weighing about 110 pounds, fastened together in pairs. Transportation risks are slight except that it is susceptible to damage by water. The cost at destination, including freight charges, to one complainant was approximately 26 cents and to the other 28 cents per pound.

The shipments were loaded by the initial rail lines to an average of 33,640 pounds per car. The distance from San Francisco to Boston, destination of most of the shipments, is 3,247 miles. For that distance the earnings under the rate charged were more than 20.7 mills per ton-mile and 34.3 cents per car-mile; and under the rate sought they would be approximately 9.6 mills per ton-mile and 16.2 cents per car-mile, which complainants compare with the average of 8.59 mills per ton-mile, for an average haul of 302 miles, earned by class-I roads in 1918.

Complainants refer to the lower rates contemporaneously accorded certain commodities, such as bamboo, matting, rattan, various kinds of fiber, hemp, cattle hair, feathers, and cotton, most of which are said to have equalled or exceeded kapok in value at the time of movement. This average loading does not vary greatly from that of kapok. Prior to June 25, 1918, the import rate on a number of these commodities, including bamboo, rattan, ramie fiber, and cattle hair, was the same as that on kapok. On July 1, 1918, and other dates shortly after their cancellation, import rates were reestablished on several of these articles on a much lower basis than the class rates applied to the shipments in issue. On May 29, 1919, when import rates were reestablished on kapok, the other commodities named were placed on the same or a lower basis, except feathers and certain kinds of fiber, which were given a rate of \$1.875.

Particular stress is laid by complainants on the rates on cotton, which competes with kapok for a number of purposes. Prior to June 25, 1918, the import rate on cotton was 95 cents. When that rate was canceled the domestic commodity rate of \$1.415, increased by 25 per cent to \$1.77, became applicable to Boston. Upon protest of shippers the prior rate of \$1.415 was restored, effective July 21, 1919. From the foregoing it appears that the former import rate on kapok was approximately 31 per cent higher than that on cotton, whereas the class rate applied to the shipments to Boston and New York was 134 per cent higher than the commodity rate subsequently established on cotton.

A number of cases are cited by complainants in which reparation was awarded to the basis of an import rate established after former import rates had been canceled in accordance with general order No. 28. *Mitsui & Co. v. Director General*, 58 I. C. C., 322, is one of these. That basis was adopted not as a general principle but because it was found reasonable under the facts of each particular case.

Defendants point to complainants' admission that kapok is purchased either at Pacific or Atlantic coast ports, wherever the price is most advantageous, and insist that the import rate in effect prior to June 25, 1918, as well as that subsequently established, was depressed by water competition and should not be regarded as reasonable. We recently found that it is not to be assumed that an increase of 25 per cent in relatively low import rates would operate to make them reasonable maximum rates. *American Tobacco Co. v. Director General*, 60 I. C. C. 486.

Much testimony was introduced by defendants detailing the operating conditions in their San Francisco and Boston terminals, as well as over other portions of the route of movement, but their witnesses made no claim that any special or distinctive service was required in connection with these shipments. Whatever the difficulties of operation may have been, they appear in general to be common to all traffic over the lines of these carriers.

While the facts of record indicate that the rates charged were excessive, they do not lead to the conclusion that the rate sought by complainants would be reasonable. As compared with the \$1.415 rate subsequently established on cotton, a rate of \$1.875 would closely approximate the ratio which formerly existed between the rates on imported kapok and cotton, and also be the same in amount as the rate established by defendants on May 29, 1919, on several of the commodities herein mentioned with which kapok is fairly comparable. As applied to these shipments a rate of \$1.875 would have yielded 11.5 mills per ton-mile and 19.2 cents per car-mile for the movement to Boston.

We find that the rates assailed were unreasonable to the extent that they exceeded \$1.875 per 100 pounds; that complainants made the shipments as described and paid and bore the charges thereon; that they were damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rate herein found reasonable; and that they are entitled to reparation with interest. Complainants should comply with rule V of the Rules of Practice.

No. 12242.

HIPOLITE COMPANY

v.

AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY,  
DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted January 24, 1922. Decided March 4, 1922.*

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Present classification ratings on hipolite found not unreasonable. Former any-quantity ratings of first class in official and second class in western and southern classifications found unreasonable, as applied to carload shipments, to the extent that they exceeded third class. Reparation awarded.

*Thomas L. Philips* for complainant.

*A. M. Bull, N. S. Brown, and L. H. Strasser* for defendants.

REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

BY DIVISION 4:

Exceptions were filed by complainant to the report proposed by the examiner, and the case was orally argued.

Complainant, a corporation engaged at St. Louis, Mo., in the manufacture of a preparation known as hipolite, by complaint filed February 17, 1921, alleges that the rates charged by defendants on carload and less-than-carload shipments of its product were and are unreasonable and unduly prejudicial. We are asked to award reparation on shipments moving between January 1, 1917, and the effective date of our order herein. Ratings herein referred to apply on the articles mentioned in connection therewith, "in glass or earthenware, packed in barrels or boxes."

Complainant's product is classed by defendants as confectioner's paste. Prior to August 15, 1920, the official classification carried an any-quantity rating of first class and the western and southern classifications any-quantity ratings of second class on "confectioner's paste, n. o. i. b. n." On that date a carload rating of third class was published in all three classifications, but no change was made in the less-than-carload ratings. Complainant contends that its product in carloads should be rated not higher than fifth class, in all of the classifications, and in less than carloads not higher than second class in the official and southern and third class in the western.

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Hipolite is made by secret process from glucose and cane sugar to which is added flavoring and a small quantity of egg albumen. It is put up in quart and pint glass jars, one dozen quarts and two dozen pints to each case. Double containers consisting of inner and outer fiber-board cases are used for both sizes. Comparatively little is shipped in quart jars, the demand being largely for the pint size. In packing the pints one dozen are placed in each inner case and two inner cases are enclosed in an outer case. A case of 24 pints weighs 36 pounds and the wholesale price is \$6. The dimensions of this case are 13.75 inches long, 13.25 inches wide and 12 inches deep; the weight per cubic foot is 27.9 pounds, and the value per cubic foot \$5.50. Hipolite is of heavy consistency and when a jar of it is broken there is little or no contamination of other freight. Claims for damage in transit have been nominal.

Hipolite is advertised as a "marshmallow creme" suitable for use as a filling or icing for cakes; as a substitute for whipped cream; as an ingredient in the preparation of salad dressing; as a spread for cakes and crackers; and as a sauce for fruits, sundaes, and desserts. It may also be used for other table purposes.

Complainant stresses a comparison of the ratings on its product with the ratings on "sugar butter." For a number of years sugar butter has been rated fifth class in carloads and second and third class in less than carloads in the official and western classifications and second class any quantity in the southern classification. Sugar butter contains the same ingredients, except egg albumen, as hipolite, but the process of manufacture is apparently different, as the products are wholly dissimilar in texture and appearance. The value per cubic foot of hipolite and sugar butter is approximately the same, but the weight per cubic foot of the latter is nearly twice that of the former. Hipolite is worth about 19.7 cents per pound and sugar butter about 11.5 cents per pound. The two commodities are competitive to a limited degree, both being used for some purposes in common, but sugar butter is not suitable for many of the chief uses to which hipolite is put. But little sugar butter is manufactured at the present time, and the movement is entirely in less than carloads.

Complainant refers to the ratings on peanut butter, jams, jellies, or preserves, fruit, n. o. i. b. n., fruit butter, and crushed fruit. "These articles are rated fifth class, in carloads, in all of the classifications. In the official classification peanut butter in less than carloads is rated second class, and jams, jellies, preserves, fruit, fruit butter, and crushed fruit in less than carloads first class. In the southern and western classifications these articles, in less than carloads, including peanut butter, are given the same ratings as hipolite. The volume



of movement of jellies is said to be greater than that of hipolite and the weight per cubic foot of the former is much greater.

Salad dressing, in carloads, is rated fifth class in official and western classifications and sixth class in the southern classification. In less than carloads it is rated first class in official, second in southern, and third in western. Olive oil, in carloads, is rated fifth class in the official classification and fourth class in the western. In the southern it is rated first class any quantity. In less than carloads it is rated first class in the official and western.

Candy, in carloads, is rated fifth class in the southern and third class in the other classifications. In less than carloads it is rated second class in all. Complainant comments on the fact that candy is of a semiperishable nature whereas hipolite is practically non-perishable.

Defendants show that the present ratings on many articles, such as flavoring extracts, beef extracts, root-beer extracts, malted milk, milk food, extracted honey, malt syrup, drugs, medicines, chemicals, and figs or candied fruit are as high or higher than on hipolite.

We find that the present ratings on hipolite in the respective classifications are not unreasonable but that the former first-class and second-class any-quantity ratings resulted in unreasonable charges to the extent that such ratings as applied to carload shipments exceeded third class.

We further find that complainant made carload shipments between January 1, 1917, and August 15, 1920, upon which it paid and bore the charges and is entitled to reparation with interest. Complainant should comply with rule V of the Rules of Practice. Upon certain carload shipments charges appear to have been collected on basis of the fifth-class rates. On any of such shipments that moved prior to the date of the establishment of the third-class rating, collection of the difference between the applicable rates and third-class rates may be waived.

66 I. C. C.

No. 12248.  
FORT WAYNE CORRUGATED PAPER COMPANY  
*v.*  
DIRECTOR GENERAL, AS AGENT.

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*Submitted November 21, 1921. Decided March 7, 1922.*

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Charges collected on box board, in carloads, from Hartford City to Fort Wayne, Ind., during federal control, found not unreasonable or otherwise unlawful. Complaint dismissed.

*H. E. Fairweather, Richard W. Burg, and Louis W. Bauer* for complainant.

*Fred W. Heid* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing box board at Hartford City, Ind., by complaint filed February 10, 1921, alleges that the charges collected by defendant on 238 carloads of unlined box board shipped between June 27, 1918, and March 25, 1919, from Hartford City to Fort Wayne, Ind., were illegal, unjust, and unreasonable. The prayer is for reparation. Rates will be stated in cents per 100 pounds.

The shipments moved over the Lake Erie & Western, 47 miles. Box board, not corrugated nor indented, was and is rated fifth class in the governing official classification, minimum 36,000 pounds. In the Lake Erie & Western's exceptions to this classification it was rated 83.33 per cent of sixth class, minimum 40,000 pounds. On this basis the rate would have been 8 cents. Charges were collected at a rate of 9 cents, minimum 40,000 pounds, under the following provision published in the special supplement, effective June 25, 1918, to the tariff naming the class rates:

No rate shall be applied on any traffic moving under class rates lower than the amount in cents per 100 pounds for the respective classes as shown below for the several classifications. The minimum rate on any article shall be the rate for the class at which that article is rated in the classification shown below applying in the territory where the shipment moves.

66 I. C. C.

Where rates are governed by Official Classification

Classes -----	1	2	3	4	5	6
Rates -----	25	21½	17	12½	9	7

A similar provision was published in the exceptions.

The minimum rule as originally published in general order No. 28 of the Director General of Railroads specifically dealt with the exceptions to the classification, but by subsequent supplement, effective on the same date as general order No. 28, the rule was changed to read as quoted above.

Complainant contends (1) that the rate charged was illegal and unreasonable to the extent that it exceeded 83.33 per cent of sixth class, or 8 cents; (2) that rates based upon a percentage of class rates are commodity rates; and (3) that therefore the minimum class-rate provision was not applicable to these shipments. Reference to *Boldt Paper Mills v. Director General*, 62 I. C. C., 471, will suffice to dispose of these contentions except that of unreasonableness. We there found that an exception to the classification so published could not be considered a specific commodity rate, and that the minimum class rate applied.

Eight of the shipments weighed less than 40,000 pounds, the minimum assessed, and complainant urges that in connection with the 9-cent rate the official classification minimum of 36,000 pounds should have been applied, a point not raised in the case cited. The minimum was fixed by the exceptions at 40,000 pounds, and was not changed by the special supplement naming the minimum class rate. It follows that the minimum of 40,000 pounds was applicable.

Little evidence was submitted by complainant in support of the allegation of unreasonableness. It compared the rate charged with commodity rates on box board applicable between various points in central territory ranging from 5.5 to 8 cents for distances of from 25 to 99 miles. On an average about two cars per day are shipped from Hartford City to the factory at Fort Wayne; and these cars move from the latter point under load. Loss and damage claims are negligible.

Defendant instanced contemporaneous commodity rates on box board, in carloads, ranging from 9 to 10.5 cents, between points in central territory, 46 to 85 miles.

Prior to *Building and Roofing Paper and Paper Board Rates*, 52 I. C. C., 84, decided December 9, 1918, the general basis of rates on box board within central territory was 83.33 per cent of sixth class, but in that case we found that reasonable maximum rates on paper boards should not exceed 90 per cent of sixth class. When these shipments moved 90 per cent of the sixth-class rate would have been 9 cents.

We find that the charges collected were not unreasonable or otherwise unlawful. The complaint will be dismissed. 66 I. C. C.

No. 12276.

W. L. CARNEY

v.

DIRECTOR GENERAL, AS AGENT.

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*Submitted October 31, 1921. Decided March 7, 1922.*

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Rates on bituminous coal, in carloads, from points in Indiana and Illinois to Chicago, Ill., during federal control, found not unreasonable or otherwise unlawful. Complaint dismissed.

*W. L. Carney* for complainant, in person.

*Royal McKenna, A. P. Humburg, and K. L. Richmond* for defendant.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a traffic manager acting in behalf of various individuals, firms, and corporations dealing in or using coal at Chicago, Ill., by complaint filed February 12, 1921, alleges that the rates charged by defendant on bituminous coal, in carloads, shipped between June 25 and October 4, 1918, inclusive, from points in Illinois and Indiana to Chicago were unreasonable, unjustly discriminatory, unduly prejudicial, and in excess of those legally applicable. The prayer is for reparation only. No evidence was introduced in support of the allegations of unjust discrimination and undue prejudice. Rates will be stated in amounts per net ton.

For the purpose of rate making the coal mines in Illinois and Indiana have been grouped into districts, and, generally speaking, rates on coal from these groups to Chicago, and other points for many years prior to June 25, 1918, were maintained on a fixed differential basis. This differential basis had remained constant since November 15, 1915, except for a slight change in December, 1916, brought about by an order of the Illinois Public Utilities Commission authorizing a 5 per cent increase with a maximum of 5 cents in the intrastate rates on coal from the Illinois fields to Chicago. General order No. 28 of the Director General of Railroads authorized increases which became effective June 25, 1918, in the coal rates in

this territory in varying amounts: 15 cents where the rates were 49 cents and less; 20 cents where the rates were from 50 to 99 cents; 30 cents where the rates were from \$1 to \$1.99; and greater increases where the rates were higher. That order further provided:

Where rates from producing points or to destinations have been based on fixed differentials in cents per ton, such differentials to be maintained, the increase to be figured on the highest rated point or group.

On June 24, 1918, the rates to Chicago from these coal fields ranged from 77 cents on shipments from Ladd, Ill., to \$1.47 from Evansville, Ind., with a rate of \$1.25 from Marion, Ill., in the so-called southern Illinois group. The rate from the southern Illinois group is the base rate with respect to which the rates from other groups are differentially related. In publishing the increases under general order No. 28 the carriers adopted the southern Illinois group as the base instead of Evansville. From the Evansville group coal does not move in as large volume to Chicago as from the southern Illinois group, which is one of the most important coal-producing sections in the state. On June 25, 1918, in consequence of the increase authorized under general order No. 28 and the rule for the disposition of fractions, the southern Illinois group rate became \$1.60, which was 35 cents more than the rate prior to that date. The rates from the other coal groups to Chicago were likewise increased 35 cents to maintain the preexisting differentials.

Effective October 5, 1918, the rates to Chicago from these coal-producing groups were reduced 5 cents, in order to reflect the specific increases, irrespective of the rule for the disposition of fractions.

Complainant contends that the increases made on June 25, 1918, were in excess of those authorized by general order No. 28, and were both illegal and unreasonable to the extent that they exceeded the rates subsequently established, to the basis of which reparation is asked. It is also contended by complainant that lower increases on June 25, 1918, would have resulted if based on the rates from Evansville and other points in Indiana or certain points in western Kentucky.

Without considering whether general order No. 28 was strictly complied with, the rates attacked as unlawful for failure to observe the terms of that order were filed with us by the President through his duly appointed agent, and such failure would not prove that the rates established under the order were unreasonable. *Anaconda Copper Mining Co. v. Director General*, 57 I. C. C., 723; *Acme Cement Plaster Co. v. Director General*, 59 I. C. C., 411.

The only evidence submitted by complainant in support of his allegation of unreasonableness is a comparison of the ton-mile earnings ranging from 10.9 to 4.1 mills for hauls from 103 to 369 miles

under the rates assailed with ton-mile earnings ranging from 3.7 to 5.7 mills under rates on coal to Chicago from Huntington, Ark., 730 miles; North Fork, W. Va., 707 miles; Morganfield, Ky., 335 miles; and Carbondale, Pa., 845 miles. The circumstances surrounding the transportation of coal from the points instanced is not shown; the earnings per ton-mile under the rates therefrom are in some instances greater for more than twice the distance than under some of the rates assailed; and complainant admits that during the period covered by the complaint very little if any coal was shipped to Chicago from those points.

It is urged on behalf of the Director General that the increases made on June 25, 1918, were in strict accordance with the terms of general order No. 28; that the freight rate authority under which rates were subsequently reduced 5 cents was issued as a result of representations made by various coal interests of Indiana and Illinois that the preexisting relationship of the producing mines had been disturbed by the increases under general order No. 28; and that the reduction on October 5, 1918, represents nothing more than a concession to the coal interests in those states, and by no means should be regarded as an admission that the former rates were on an improper or unreasonable basis. It is also insisted that the rates on coal in this territory are among the lowest coal rates in the country.

We find that the rates assailed were not unreasonable or otherwise unlawful. The complaint will be dismissed.

No. 12340.  
AGATE PRODUCTS COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted October 31, 1921. Decided March 7, 1922.*

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Rates on less-than-carload shipments of agate bowlders in barrels and boxes from points in Montana to San Francisco, Calif., found not unreasonable, but rates on similar shipments in bags found unreasonable. Reparation awarded.

*E. W. Hollingsworth and Bishop & Bahler for complainant.  
Fred H. Wood, James R. Bell, C. W. Durbrow, Elmer Westlake,  
Frank B. Austin, M. A. Cummings, John F. Finerty, and Thomas M.  
Woodward for defendant.*

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner.

Complainant, a corporation manufacturing agate products at San Francisco, Calif., by complaint filed February 19, 1921, alleges that the rates charged on 27 less-than-carload shipments of agate pebbles or bowlders between March 15, 1919, and January 13, 1920, both inclusive, from Billings, Fallon, Glendive, Miles City, and Rosebud, Mont., to San Francisco, were unjust and unreasonable. We are asked to award reparation. Rates will be stated in amounts per 100 pounds and apply on less-than-carload shipments.

The shipments consisted of agate pebbles or bowlders in the natural state. Twenty were in bags. The remaining seven were in boxes and one barrel, which moved from Glendive, and charges thereon were collected at the applicable second-class rate of \$3.075. No rating was provided for agate shipped in bags, but, under a penalty rule in western classification, charges on these shipments were collected at rates two classes higher than on shipments in boxes or barrels, or one and one-half times the first-class rate. These rates were \$4.65 from Billings; \$5.025 from Rosebud; \$5.14 from Miles City, prior to December 31, 1919, and \$5.1875 on and after that date;

66 I. C. C.

\$5.2875 from Fallon; and \$5.3625 from Glendive. Apparently one of the shipments from Billings and three from Miles City were undercharged and one from Miles City was overcharged. Complainant contends that fourth-class rates of \$1.865 from Billings, \$2.015 from Rosebud, \$2.05 from Miles City, \$2.115 from Fallon, and \$2.15 from Glendive would have been reasonable. The distances to San Francisco over the routes by way of which most of the shipments moved are: From Billings, 1,895; Rosebud, 2,009; Miles City, 2,042; Fallon, 2,091; and Glendive, 2,120 miles. The short-line distances are approximately 476 miles less.

Most of the agate bowlders contained in these shipments weighed 2 pounds or less. The bags used were those in which cement is ordinarily shipped, a bagful of the bowlders weighing from 90 to 120 pounds. The average price paid was about 6 to 8 cents a pound. The highest price paid by complainant for agate produced in the United States was 20 cents a pound and the lowest 3 cents. It does not intend to use any more Montana agate and recently paid 35 cents a pound for Brazilian agate bowlders, f. o. b. New York, N. Y. Some of the best grades of agate run as high as \$3 a pound. Agate bowlders can be handled like ore and it does not appear that they can be easily damaged in transit. There were no claims for loss or damage on any of complainant's shipments.

Comparison is made with the rates on jasper and onyx, which were rated fourth class, loose or in packages, in western territory. Jasper and onyx are ordinarily shipped in quarried blocks weighing 200 pounds or more and in open cars. The average value of jasper, so shipped, is 10 cents a pound, and of onyx 2 cents. Agate weighs approximately 75 pounds per cubic foot, and onyx 181 pounds. The weight of jasper is not shown. Jasper and onyx compete largely with marble and are rated the same as marble. Ore of a value not exceeding 5 cents per pound, shipped in barrels, boxes, or bags, in less than carloads, was rated fourth class.

The rating originally published in 1910 in western classification on agate in the rough, boxed, was first class. This was reduced to second class, in boxes or barrels, effective on April 1, 1918. The carriers do not regard bags as proper containers for a commodity of the weight and value of agate bowlders. Except as to value agate bowlders are very similar, from a transportation standpoint, to grinding pebbles, rated fourth class, in bags, in less than carloads.

Complainant suggests that, inasmuch as the agate bowlders had not been sawed, the rating on agate in the rough was not applicable because the classification then in effect applied the term "in the rough" to articles "when sawed, hewn, planed or bent, and before any further manufacturing process has begun," without specifically



restricting it to wooden articles as is now the case. It contends that agate is classified in the silica group in mineralogy, and that agate boulders should, by analogy, take the fourth-class rating applicable on silica. Silica does not have a value of more than \$10 per ton. An agate boulder is more analogous to agate in the rough than to silica.

We find that the rates charged on the shipments in boxes and in the barrel were not unjust or unreasonable, but that the rates assessed on the shipments in bags were unreasonable to the extent that they exceeded the second-class rates contemporaneously in effect; that complainant made the shipments as described and paid and bore the charges thereon; and that it was damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the rates herein found to have been reasonable. Complainant should comply with rule V of the Rules of Practice.

63 I. C. C.

No. 12395.

CHEVROLET MOTOR COMPANY OF CALIFORNIA

v.

DIRECTOR GENERAL, AS AGENT, ET AL.

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*Submitted November 21, 1921. Decided March 7, 1922.*

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Third-class rates charged on shipments of automobile jacks, in less than carloads, from Ashland, Ohio, and Joliet, Ill., to Oakland (Melrose), Calif., since January 4, 1918, found applicable and not unreasonable or unjustly discriminatory. Complaint dismissed.

*Frank A. Gaynor, John Thomas Smith, and C. R. Scharff* for complainant.

*Thomas M. Woodward and J. R. Bell* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation, engaged in the automobile business at Oakland, Calif., by complaint filed February 21, 1921, alleges that the third-class rates charged on less-than-carload shipments of automobile jacks from Ashland, Ohio, and Joliet, Ill., to Oakland (Melrose), Calif., since January 4, 1918, were and are unreasonable and unjustly discriminatory. We are asked to prescribe commodity rates on this traffic and to award reparation.

The automobile jack is a mechanical contrivance made of iron and used for the lifting of automobiles. Transportation charges were collected on complainant's shipments upon the basis of the third-class rates applicable on "jacks, or jack screws, not otherwise indexed by name, not mounted on trucks, less-than-carloads." During the period of movement commodity rates were in effect on "tools," the description including "jacks, wagon, boxed or crated." These commodity rates were canceled March 15, 1921. Complainant seeks to have them restored and made applicable to automobile jacks, with reparation to that basis.

At the hearing, it was stated on behalf of complainant that it did not attack the class rates and rating as unreasonable, but that the

66 I. C. C.

issue was whether the commodity rates were applicable on shipments of automobile jacks.

Defendants' witnesses contended that the tariffs naming the commodity rates on wagon jacks covered only the commodities specifically named. They testified that the wagon jack is a simple contrivance made of wood; that the automobile jack is more complicated in construction; and that the commodity rate formerly in effect had been established for the movement of jacks to be used for horse-drawn vehicles, and was abnormally low. Numerous commodities which move under class rates in less-than-carload quantities were mentioned.

Complainant's shipments fall within the description "jacks, or jack screws" and not "jacks, wagon." The commodity description was neither misleading nor indefinite, as the term "wagon" is commonly accepted as applying to a vehicle which is not self-propelled. The evidence is not persuasive that less-than-carload shipments of automobile jacks should move under commodity rates.

We find that the rates charged were applicable and not unreasonable or unjustly discriminatory. The complaint will be dismissed.

68 I. C. C.

No. 12421.

WEST COAST GROCERY COMPANY ET AL.

v.

DIRECTOR GENERAL, AS AGENT, OREGON-WASHINGTON RAILROAD &amp; NAVIGATION COMPANY, ET AL.

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*Submitted November 14, 1921. Decided March 7, 1922.*

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Charges on carload shipments of dried fruits from Fresno and other California points to Tacoma, Wash., found not unreasonable or unjustly discriminatory. Complaint dismissed.

*Jay W. McCune* for complainants.

*C. B. Ackerman* for Director General of Railroads.

*Lane Summers* for Oregon-Washington Railroad & Navigation Company and Southern Pacific Company.

*John F. Finerty, H. A. Scandrett, and J. M. Souby* for all defendants.

#### REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainants, corporations engaged in the wholesale grocery business at Tacoma, Wash., allege that they were subjected to the payment of unreasonable and unjustly discriminatory switching charges on carload shipments of dried fruit during the period from December 1, 1916, to December 20, 1920, from Fresno, Locans, Fowler, Selma, and Dinuba, Calif., to Tacoma. Reparation only is asked. Rates will be stated in cents per 100 pounds.

The shipments moved over the Southern Pacific to Portland, Oreg., and the Oregon-Washington to Tacoma. At Tacoma they were switched by either the Northern Pacific or the Chicago, Milwaukee & St. Paul to complainants' warehouses, which were on an industry track used jointly by those carriers. Their charges for this switching service, which varied from \$3.25 to \$5.15 per car, added to the applicable joint rates of the line-haul carriers, constituted the basis for the aggregate transportation charge.

The tariffs publishing the joint rates limit the absorption of switching charges at Tacoma to competitive traffic. Prior to December 20,

1920, the Oregon-Washington was the only line reaching that point which participated in the joint rate. On that date the Northern Pacific also became a party thereto, thus making the traffic competitive. Thereafter the line-haul carrier absorbed the switching charges.

The Oregon-Washington, during a portion of the period preceding participation in the rate by the Northern Pacific, paid the switching charges on this traffic to the delivering lines, but apparently did so through oversight and subsequently collected the amount from complainants.

On like shipments from San Francisco and grouped points, and on fresh fruit, vegetables, and canned goods from Fresno and other California points, the joint rates applicable during the period covered by the complaint provided for absorption of these switching charges at Tacoma, and were not restricted to movements beyond Portland over the Oregon-Washington.

The aggregate transportation charges collected on complainants' shipments, including the switching charges assailed, were less than the aggregate under combination rates contemporaneously applicable on movements over the same route to Portland and the Northern Pacific beyond Portland. Prior to June 25, 1918, the rate from Fresno to Tacoma, all rail, was 47 cents over the Southern Pacific and Oregon-Washington and 52 cents over the Southern Pacific and Northern Pacific, the distance over each route being approximately 990 miles. The rate over the Southern Pacific to San Francisco, and by water beyond, was 46.75 cents. Drayage expense of about \$1.25 per ton was necessary in connection with movements over this rail-and-water route. Defendants contrast these rates with rates on dried fruit on a materially higher basis contemporaneously applicable from Tacoma, Portland, and Seattle, Wash., to Idaho and Montana points, as, for example, 90 cents from Tacoma to Boise, Idaho, 632 miles, and 85 cents from Tacoma to Butte, Mont., 675 miles.

We find that the charges assailed were not unreasonable or unjustly discriminatory. The complaint will be dismissed.

66 I. C. C.

No. 12589.

## GENERAL PORCELAIN COMPANY

v.

DIRECTOR GENERAL, AS AGENT, BALTIMORE & OHIO  
RAILROAD COMPANY, ET AL.

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Submitted November 10, 1921. Decided March 7, 1922.

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Rate on feldspar, in carloads, from Wilmington, Del., to Parkersburg, W. Va.,  
found not unreasonable or otherwise unlawful. Complaint dismissed.

*William Beard* for complainant.

*Charles R. Weber* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing insulators at Parkersburg, W. Va., alleges that the rate charged on certain carloads of feldspar, shipped subsequent to December 8, 1919, from Wilmington, Del., to Parkersburg was unreasonable and unjustly discriminatory. It asks for reparation and the establishment of a reasonable and nondiscriminatory rate for the future.

Complainant bases its allegations of unlawfulness almost solely upon the contention that its plant, formerly at East Liverpool, Ohio, was moved to Parkersburg because of assurances from the Baltimore & Ohio that a lower rate would be established from Wilmington to Parkersburg than that contemporaneously maintained from Wilmington to East Liverpool. But such an agreement would afford no basis for condemning the rate assailed. *Michigan Upper Peninsula Pig-Iron Rates*, 26 I. C. C., 284.

The shipments moved over the Baltimore & Ohio and charges were collected at the applicable rates. Prior to August 26, 1920, the rates from Wilmington were 22.5 cents per 100 pounds to Parkersburg I. C. C.

kersburg and 19.5 cents per 100 pounds to East Liverpool. The present rates are 32.5 and 28 cents, respectively, established on that date. The distances are 453 and 394 miles, respectively. There is but little difference in the respective ton-mile earnings.

We find that the rates assailed were not and are not unreasonable or otherwise unlawful.

The complaint will be dismissed.

68 I. C. C.

No. 12458.

CAPITAL WAREHOUSE COMPANY

v.

DIRECTOR GENERAL, AS AGENT, AND ILLINOIS  
CENTRAL RAILROAD COMPANY.

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*Submitted January 18, 1922. Decided March 4, 1922.*

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Collection of charges for switching at Indianapolis, Ind., carload shipments of sisal stored in transit at Indianapolis, found illegal. Reparation awarded.

*Isaac Born and Charles P. Stewart* for complainant.

*A. P. Humburg and Fred W. Heid* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 4, COMMISSIONERS MEYER, DANIELS, AND POTTER.

## BY DIVISION 4:

Exceptions were filed by defendants to the report proposed by the examiner and the issues were orally argued before us.

Complainant, a corporation engaged in storing and reshipping sisal at Indianapolis, Ind., by complaint filed February 25, 1921, alleges that the switching charge of \$2 per car, assessed at Indianapolis on carloads of sisal imported from Mexico, forwarded from New Orleans, La., and stopped at Indianapolis for storage and subsequent reshipment, was and is unlawful, unjust, and unreasonable. We are asked to award reparation on shipments made during the period from January 21 to July 21, 1920.

The shipments were consigned to complainant and moved from New Orleans over the Illinois Central Railroad to Indianapolis where they were turned over to the Indianapolis Union Railway, hereinafter referred to as the Belt, and by that road delivered to complainant. When the sisal was reshipped to final destination the cars were delivered by the Belt to the outbound carrier, the Pittsburgh, Cincinnati, Chicago & St. Louis Railroad or the Cleveland, Cincinnati, Chicago & St. Louis Railway. Eighty-eight cars were thus reshipped during January and February, 1920, and 167 cars from March 1 to July 1, 1920, to various points in central and trunk line territories.

In addition to the through rate and transit charges, the Illinois Central collected a charge of \$2 per car for "extra switching" at Indianapolis on the outbound movements. Complainant alleges



that there was and is no tariff authority for the assessment of the \$2 charge.

At the time of shipment from New Orleans, joint through rates were in effect from that point to the various points of destination in central and trunk line territories. The tariff naming these rates referred to tariffs of individual lines on file with the Interstate Commerce Commission for rules governing transit and absorption of switching charges. The Illinois Central tariff governing the absorption of switching charges at Indianapolis provided that between Indianapolis and all stations on the Illinois Central the actual switching charges of the terminal lines, but not to exceed \$3 per car, would be absorbed, and that the intermediate switching charges of the Belt would also be absorbed.

Agent Morris' tariff I. C. C. No. 838, effective August 24, 1919, and in force at the time of movement, provided for storage in transit of sisal at Indianapolis, as follows:

Carload shipments of sisal, forwarded from New Orleans, La., may be stopped at Indianapolis, Ind., for storage, and reshipment from Indianapolis, Ind., by direct routes to final destination at the published through rates in effect at time of shipment from New Orleans, to final destination (when such final destination is located in Central, Trunk Line, and New England Territories) at an additional charge of two (2) cents per 100 pounds over the published through rate from New Orleans to final destination.

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#### EXPENSE OF HANDLING.

Rule 15. The expense of handling into and out of storage, including extra switching, if any, must be borne by the shipper or consignee.

The Belt is not shown as a participating carrier in this tariff, but defendant Illinois Central and other line-haul carriers are parties thereto.

Complainant contends that there is no "extra switching" involved in handling the shipments at Indianapolis; that if they were handled as through shipments, the movement would be identical with the exception that no delivery would be made to any industry; that the handling through Illinois Central yards would be identical; that the Illinois Central would make delivery to the Belt and the Belt would deliver to the connecting line; and that the storage-in-transit charge of 2 cents per 100 pounds provided by the tariff covers the service performed by the Belt in placing an empty car at the warehouse and switching the loaded car to the rails of the outbound carrier. It contends further that the switching from the warehouse on the outbound movement is in no sense "extra switching," but the usual and ordinary switching necessarily required under the transit arrangement; and it points out that defendants accord storage in transit on sugar and permit the creosoting of lumber in transit at plants located on

the Belt in Indianapolis, and assess no switching charge on the outbound movement of these commodities.

Defendants claim that the switching charge complained of is authorized by the switching tariff of the Belt. This tariff provides a charge of \$2 per car for switching performed within the Indianapolis switching limits, in connection with road-haul movements. They state that the arrangement for storing sisal in transit at Indianapolis was established during federal control, in agent Morris' tariff I. C. C. No. 838; that some of the warehouses in which sisal is stored at Indianapolis are on the rails of the Big Four and the Pennsylvania railroads, and that in connection with shipments to those warehouses there would be no extra switching because the Illinois Central, which brings the sisal into Indianapolis, would make delivery to the Big Four or Pennsylvania, absorbing the Belt's switching charges, the same as they would do on a through shipment, and the Big Four or Pennsylvania would do their own switching to or from the warehouse. They state also that it is quite usual to provide for the non-absorption of switching charges on other lines under transit arrangements, and that these arrangements are based on conditions existing at particular points and surrounding the particular business handled.

While contending that the extra switching referred to means any switching performed in addition to that which would be performed on a shipment passing through Indianapolis without storage, defendants interpret the tariffs as not imposing a charge for extra switching where shipments are stored at warehouses on the line of one of the outbound carriers. It is apparent that in the movement of a car from the Illinois Central break-up yards to the yards where the trains of the outbound carrier are made up there is no greater switching service performed, and there are no additional movements, on a shipment stored at a warehouse on the Belt, as compared with a shipment stored at a warehouse on the line of the outbound carrier.

The Illinois Central contends that in any event the complaint should be dismissed with respect to the period since federal control, because of the lack of necessary parties defendant. It contends that it collected the \$2 per car charge for the Belt as a matter of convenience.

The Illinois Central participates in the tariff under which the shipments moved from New Orleans and in the tariff establishing the storage-in-transit arrangement at Indianapolis. It signed the outbound bills of lading and collected the \$2 per car switching charge. Shipments which move from a point of origin to final destination with an arrangement for storage in transit are regarded as moving under a single continuous contract of carriage. Under the circum-

stances neither the Belt nor the outbound carriers are necessary parties defendant and an award may be made against the Illinois Central.

We find that the assessment of the switching charge of \$2 per car by defendants was illegal; that complainant made the shipments as described and paid and bore the charges herein found illegal; that it has been damaged in the amount of the charges illegally collected and is entitled to refund of such charges, with interest. Complainant should comply with rule V of the Rules of Practice.

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No. 4844.

EXPORT BILL OF LADING.  
IN THE MATTER OF BILLS OF LADING.

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*Submitted March 4, 1922. Decided March 7, 1922.*

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Certain conditions in part II of the through export bill of lading, heretofore prescribed by the Commission in 64 I. C. C., 347, modified in certain particulars in the light of further hearing upon recommendations made by the United States Shipping Board.

*Borders, Walter, Burchmore & Collin*, and *N. D. Belnap* for National Industrial Traffic League; and *C. B. Heinemann* for Institute of American Meat Packers.

*Roscoe H. Hupper* and *Charles R. Hickox* for International Mercantile Marine Company (American Line), Munson Steamship Line, Elwell Lines, Independent Steamship Company, and Norton Lilly Company (Isthmian Line to Mediterranean, and Norton Line to South America).

*Claudian B. Northrop* for Southern Uniform Bill of Lading Committee; *Charles H. Haight* for International Chamber of Commerce; *W. H. Chandler* for Boston Chamber of Commerce; *Henry E. Reed* for Atlantic marine department of Fireman's Fund Insurance Company, and Home Fire & Marine Insurance Company, and American Institute of Marine Underwriters; *F. H. Price* for Millers National Federation and National Industrial Traffic League; and *W. H. Jones* for Marine Office of America (Marine Underwriters) and American Institute of Marine Underwriters.

*J. F. Johnston* for Appleton & Cox, Incorporated, and American Institute of Marine Underwriters; *Robert N. Collyer* for railroads in official classification territory; *James C. Lincoln*, traffic manager, for Merchants Association of New York; *Raymond L. French* for Manufacturers Association of Commerce and Columbia Graphophone Company; *R. C. Fulbright* for Texas Cotton Association, Dallas Cotton Exchange, Houston Cotton Exchange, New Orleans Cotton Exchange, New York Cotton Exchange, and Savannah Cotton Exchange; *Lewis, Adler & Laws* for Insurance Company of North America; and *C. G. Hylander* for Wm. Wrigley Jr. Company.

## REPORT OF THE COMMISSION ON FURTHER HEARING.

HALL, Commissioner:

In *Export Bill of Lading*, 64 I. C. C., 347, we made rules and regulations prescribing a form of through export bill of lading to be issued by carriers subject to the interstate commerce act for application to the transportation of property, in connection with ocean carriers whose vessels are registered under the laws of the United States, from points in the United States designated under the provisions of section 25 of the interstate commerce act to points in non-adjacent foreign countries. Our order was, by its terms, to become effective on February 15, 1922. Upon application by the respondent carriers the effective date was postponed until March 15, 1922.

Subsequently, under date of February 20, 1922, the United States Shipping Board recommended that four amendments, which it considered essential, should be made in part II, frequently referred to as the ocean conditions, of the through export bill of lading prescribed by us. The Shipping Board stated that without these amendments it was unable to give its approval pursuant to the provisions of section 19 of the merchant marine act, 1920, for the reason, among others, that the Shipping Board intends to promulgate a port bill of lading in the near future and believes that there should be no variance in essential particulars between the two bills.

Upon receipt of this communication we reopened the case for further hearing, by order dated February 23, 1922, such hearing to be limited to the reasonableness and propriety of the suggested provisions for inclusion in part II of the through export bill of lading. As we had been advised that considerable work had been done and expense incurred in the matter of printing supplies of the bill theretofore prescribed by us, and in order to avoid delay and confusion, we provided in our order reopening the case that, pending hearing and decision thereon, the order entered on October 21, 1921, as extended on January 30, 1922, should remain in full force and effect. We further said, in an announcement dated February 24, 1922:

An early decision will be rendered. In the event that the further hearing shows that amendments such as are recommended are appropriate, the effective date of any order of the Commission prescribing amendments will be such as to allow a reasonable time for making changes, due consideration being given to the supplies of unused printed forms on hand.

The case has been heard and statements have been made by counsel and traffic representatives on behalf of interested parties. In response to our request the Shipping Board was represented by counsel and by one of the vice presidents of the Emergency Fleet Corporation.

For convenience we shall consider the proposed amendments in the order in which they were stated in the recommendation of the Shipping Board, setting forth in connection with each the reasons given in support of it in the communication from the Shipping Board.

#### I.

Renumber paragraph 3 as paragraph 3 (a) and change \$100 to read \$250.

Reasons: Under existing conditions the \$100 valuation, originally adopted many years ago, seems inadequate. The valuation under the Hague rules which has been generally adopted by the foreign steamship lines is £100; \$250 is the value urged by many American shippers, which seems a reasonable compromise.

The paragraph referred to would, as amended, read as follows:

(a) The value of each package shipped hereunder does not exceed two hundred and fifty dollars unless otherwise stated herein, on which basis the freight is adjusted, and the ocean carrier's liability shall in no case exceed that sum or the invoice value (including freight charges, if paid, and including duty if paid and not returnable), whichever shall be the least, unless a value in excess thereof be specially declared, and stated herein, and extra freight as may be agreed upon, paid. Any partial loss or damage for which the carrier may be liable shall be adjusted pro rata on the above basis.

Evidence introduced on behalf of shippers supports this change. It was shown that on import shipments the limitation of value per package is quite generally £100, in accordance with the Hague rules, 1921, article IV, section 4. No good reason appears for a spread of this sort in the limitation of the value per package, dependent upon whether the shipment is exported or imported. The Shipping Board, as indicated above, favors the change, while the independently owned and operated American steamship lines are opposed to any increase in the present value per package.

#### II.

Add a new paragraph numbered 3(b), to read:

(b) Claims for loss, damage or delay, must be made in writing to the carrier receiving the goods for transportation between port "A" and port "B" before the goods are removed from the custody of such carrier, unless under all the circumstances such limitation of time for making claim is unreasonable, and, in that event, such claim must be made within a reasonable time. In case of failure to make delivery of the goods, such claim must be made within a reasonable time after the goods should have been delivered. Unless claims are so made the carrier shall not be liable.

Reasons: There is no notice-of-claim clause in part II of the export bill of lading. In accordance with paragraph 14 the notice-of-

claim clauses in the port bills of lading would be incorporated. These provisions are often very unreasonable. It seems desirable, therefore, to insert in part II a reasonable notice-of-claim clause.

The main controversy at the hearing, and a large part of the evidence, centered about this proposal. The purpose is to provide some uniform provision which will be fair to the shippers and at the same time afford ocean carriers adequate protection from fraudulent claims. Owing to the fact that vessels are absent a great part of the time from the ports at which they have delivered goods, and to the fact that there is a large turnover in the personnel of ocean carriers, it is essential that they be afforded an early opportunity for investigation in instances where it is alleged that shipments have been lost, damaged, or delayed. On the other hand, evidence of the shippers and others shows that it is far more difficult to file and prove claims in connection with export shipments to nonadjacent foreign countries than in the case of domestic shipments and shipments to adjacent foreign countries. This is so for a number of reasons, among them the necessity for correspondence, and the absence, in the case of shipments to nonadjacent foreign countries, of any provision similar to the Carmack-Cummins amendment to the interstate commerce act, section 20, paragraph (11), under which the initial carrier is made liable for any loss, damage, or injury caused by it, or by its connections with right to reimbursement from its connections in case the loss, damage, or injury occurred on their lines. It was shown that the paragraph, as set forth above, is indefinite and uncertain, difficult of application, and affords opportunity for discrimination and abuse. Much difficulty has been experienced under somewhat similar provisions in the past.

It was recognized, however, that a provision carrying out the intent of the Shipping Board as explained at the hearing would be very desirable. Before the close of the hearing, and as a result of the objections and suggestions made, the parties, except the independent American lines, agreed upon and submitted a substitute for the clause 3 (b) quoted above, which, with one immaterial change for the purpose of clarifying the clause, is as follows:

(b) Notice of loss, damage, or delay must be given in writing to the carrier receiving the goods for transportation between Port A and Port B within 30 days after the removal of the goods from the custody of such carrier, or, in case of failure to make delivery, within 30 days after the goods should have been delivered, provided, that if such loss or damage is apparent at the time of the removal of the goods from the custody of the carrier, the notice of loss, damage, or delay must be given before the goods are so removed, in which case notation of the loss or damage made on the receipt given to the carrier for the goods shall constitute the notice herein required. Written claim must be filed with such carrier within nine months after giving the aforesaid written notice.

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Unless such notice is given and claim filed as above provided, the carrier shall not be liable. No suit to recover for such loss, damage, or delay shall be maintained unless instituted within one year after the giving of the written notice of loss, damage, or delay above provided for.

## III.

Add a new paragraph numbered 3 (c), to read:

(c) The carrier shall not be entitled to the benefit of any insurance that may have been effected by the shipper upon the goods shipped thereunder.

Reasons: Many of the port bills of lading commonly in use, the provisions of which are incorporated by paragraph 14 of the export bill of lading, contain clauses which attempt to give the carrier the benefit of insurance effected by the shipper. It is generally conceded both by shippers and carriers that such clauses are unreasonable and that in practice they rarely accomplish any result. They should therefore be eliminated, and this will be accomplished by the proposed paragraph 3 (c).

The independent American lines do not consent to this change, but no serious opposition developed. It is the general practice of ocean carriers to insert provisions in their port bills designed to give them the benefit of any insurance taken out by shippers. The underwriters strive, in turn, to so word their policies that no benefits thereunder will accrue to the carriers and have been fairly successful in defeating carriers' claims. It appears that at present the ocean carriers are using a new clause, as yet untested in the courts. We deem it preferable to obviate such controversies, productive as they are of uncertainty and litigation, by adopting the proposed amendment.

## IV.

Substitute the following paragraph 14 for the present paragraph 14 of the export bill of lading:

14. The property covered by this bill of lading is subject to all conditions expressed in the regular form of port bill of lading in use by the steamship company on the date of execution of this document and on file, in accordance with the rules and regulations of the United States Shipping Board and/or the Interstate Commerce Commission, but if any of such conditions are in conflict with conditions 1-15 of part II of this bill of lading the latter conditions shall control.

Reasons: The purpose of this amendment is to make it certain that the provisions of the port bills of lading covering particular trades, routes, commodities, and terminal conditions shall be incorporated. At the same time it insures that the conditions found in part II of the export bill of lading shall always be controlling.

Section 14 as it now appears in the bill of lading was recommended by the Shipping Board and was assented to by the representative I. C. C.



representatives of many large shippers and shippers' associations. Subsequently it was feared by the Shipping Board that the provision adopted would not effectuate the real intent. The provision now proposed is intended to be more definite and certain than that in the bill. The views of those present at the hearing differed widely as to whether, in fact, this would be accomplished. But no serious opposition to it was voiced at any stage, and at the conclusion of the hearing it was stated by representatives of the shippers that although there might be some technical objections to the proposed change it was not desired to urge them.

Upon consideration of the record, and for the purposes of this proceeding, we approve, as reasonable for the future, the rules and regulations recommended by the Shipping Board in its communication of February 20, 1922, except that relating to the filing of claims. For the reasons indicated above, we approve, as reasonable for the future, the provision regarding notice of, filing, and suit upon claims as agreed upon by the parties, including representatives of the Shipping Board, other than the independent American lines.

These lines did not accept any of the recommendations made by the Shipping Board, but we do not understand that they seriously object to any of the changes except the increase in the amount of the limitation upon the value per package. In this connection it may be remarked that if all carriers observe the same conditions, assuming that their rates of carriage are fairly adjusted to the risk assumed, it is obviously a matter of slight consequence to them what particular limitation per package, within reason, is provided in the bill of lading. That \$250 per package is within the range of reasonableness is attested by the general use of the Hague rules, which permit a valuation approximately twice that now approved.

The situation is one of great practical importance, to be worked out in a spirit of fairness by all. This spirit dominated the recent hearing and is reflected in the satisfactory results secured. If operation under the revised bill develops further difficulties, the way is always open for such changes as may be shown to be necessary or appropriate. It is self-evident that shipper and carrier are mutually necessary to each other and that neither can profit in the long run by unfair treatment of the other.

For the reasons indicated in the announcement of February 24, mentioned above, and confirmed at the hearing, our order herein will be made effective on July 15, 1922, thus giving the parties an opportunity to make necessary preparations for the printing and distribution of the amended bills, as well as to use the supply of forms of the bill prescribed by us on October 21, 1921, which become

effective on March 15, 1922, under supplement 15 to consolidated classification No. 2, now on file.

The Shipping Board has approved the bill of lading as thus amended, and agrees that, for the reasons above stated, the amended bill of lading should not be put into effect until July 15, 1922. The Shipping Board has also approved the bill of lading prescribed in our order of October 21, 1921, to be used until July 15, 1922.

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No. 12066.

CONSTRUCTION AND REPAIR OF RAILWAY  
EQUIPMENT.

PENNSYLVANIA RAILROAD COMPANY.

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*Submitted June 20, 1921. Decided March 7, 1922.*

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March 10, 1920, upon the resumption of corporate control and operation, the Pennsylvania Railroad Company awarded to the Baldwin Locomotive Works a contract for the repair of 200 locomotives, while maintaining shops on its own line for such work. Upon investigation, it appears—

1. That the cost to respondent was over \$3,000,000 in excess of the cost at which the work might have been done in its own shops, and included expenditures in some instances for work defectively done and subsequently replaced at further cost.
2. That respondent could have done the work in its own shops within a reasonable time by an appropriate coordination of efforts and reasonable added exertion.

*Francis I. Gowen and Henry Wolf Bickl  for Pennsylvania Railroad Company, respondent.*

*Frank P. Walsh and Richard B. Gregg for railway employees department, American Federation of Labor, and affiliated organizations, interveners.*

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This is an investigation, instituted upon our own motion, to determine whether, as has been charged, common carriers by railroad subject to the interstate commerce act have caused and are causing certain of their locomotives and other equipment to be constructed and repaired at construction or repair shops other than their own, and have purchased and are purchasing from or through such shops material and supplies used in such construction and repair, at costs in excess of those for similar construction and repairs in their own shops, including material and supplies therefor, in disregard of efficient and economical management, resulting in unreasonable expenditures, and otherwise contrary to law. A hearing has been had with reference to repairs to locomotives of the Pennsylvania Railroad Company, hereinafter spoken of as respondent, and this

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report relates only to that matter. The term respondent is also used to denote the Pennsylvania lines during federal control.

Federal control ended at midnight February 29, 1920, and the corporate owners thereupon resumed control and operation of their lines. March 10, 1920, respondent entered into a contract with the Baldwin Locomotive Works, Philadelphia, Pa., for the repair by the latter of 200 locomotives then or theretofore in service on respondent's lines; and that contract and its incidents are reviewed at length in the evidence. Respondent has long maintained, at various points on its lines, shops for the repair of its locomotives, and the questions for consideration present themselves as follows: (1) The justification for having the work done in outside shops; (2) the cost of the repairs so made as compared with the cost had the work been done in respondent's shops; and (3) the providence or improvidence of the particular contract and of settlements thereunder.

June 30, 1920, in response to our circular letter of inquiry, respondent's vice president in charge of operation submitted the following explanation of the award of the contract:

In reply to the last paragraph of your letter, would say that on March 1st, last, all available shop space on the Pennsylvania System was filled with locomotives undergoing repairs and 666 locomotives were out of service awaiting shop. It was evident also that our facilities and the available force would be required to care for locomotives in service on March 1st, but which would require general repairs within the six succeeding months. In order to relieve this congestion and have the power returned to service as soon as possible, a contract was made with the Baldwin Locomotive Works to repair 200 of our heavy type freight locomotives.

Prior to the hearing, and pursuant to our order which initiated the proceeding, one of our locomotive inspectors, together with one of our examiners of accounts, hereinafter referred to as the investigators, made a preliminary investigation, in the course of which respondent's shop records and the records of the United States Railroad Administration and of this Commission were examined, and the results were duly introduced in evidence. Some evidence also was submitted by representatives of the Railroad Administration and by the interveners. The evidence in respondent's behalf was adduced by its chief of motive power.

As a general outline of the situation, respondent's witness submitted, in substance, the following: Early in March, 1920, he found on the system a shortage of locomotives and cars to meet the demands of shippers, and, having already accepted all contracts holding over from the Railroad Administration, let two other car contracts and the locomotive contract in question. The locomotives in and await-

ing shop for classified repairs<sup>1</sup> and for running repairs requiring 24 hours or over<sup>2</sup> during 1920 are exhibited by weeks from January 3 to December 25. For the week ended February 28, practically the end of federal control, 240 locomotives are shown as then receiving and 300 as awaiting classified repairs, and 383 then under and 368 awaiting the heavy running repairs, a total of 1,291. It may be observed, in passing, that the 300 awaiting class repairs and the 368 awaiting running repairs totaled 668 locomotives, or within 2 of the 666 reported by the vice president in charge of operation as awaiting repairs March 1. A further exhibit, by months during 1920 and the first quarter of 1921, shows, as of February 28, 1920, 261 locomotives under and 340 awaiting class repairs, a total of 601, or 61 more than shown for that date on the exhibit before mentioned. The later exhibit also tabulates, as of the end of each month of the period covered, the estimated further available service of the motive power before class repairs should become necessary. As of February 28, 1920, it shows 724 locomotives good for 1 month's service, 399 for 2 months, 446 for 3 months, and so forth, up to 12 months or over. For the first 5 months of 1920 the locomotives successively indicated as good for 1 month's additional service range from 75 to 224 in excess of 500, stated by the witness in that connection to approximate the normal capacity of respondent's shops.

The witness testified that the Baldwin contract did not contemplate any reduction in respondent's shop output, it having been estimated that the full capacity of those shops would be required in addition. It might be inferred from his testimony that the consid-

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<sup>1</sup> Standard classification adopted by United States Railroad Administration for use by all carriers, beginning June 1, 1918, for reporting repairs to locomotives made at their various shops and roundhouses, as follows:

Class 1. New boiler or new back end; flues new or reset; tires turned or new; general repairs to machinery and tender.

Class 2. New firebox, or one or more shell courses, or roof sheet; flues new or reset; tires turned or new; general repairs to machinery and tender.

Class 3. Flues all new or reset (superheater flues may be excepted); necessary repairs to firebox and boiler; tires turned or new; general repairs to machinery and tender.

Class 4. Flues part or full set; light repairs to boiler or firebox; tires turned or new; necessary repairs to machinery and tender.

Class 5. Tires turned or new; necessary repairs to boiler, machinery, and tender. Including one or more pairs of driving-wheel bearings refitted.

General repairs to machinery will include driving wheels removed, tires turned or changed, journals turned, if necessary, and all driving boxes and rods overhauled and bearings refitted and other repairs necessary for a full term of service.

Locomotives receiving class 1, 2, or 3 repairs to be put in condition to perform a full term of service in the district and class of service in which they are used; class-4 repairs to restore not less than one-half of such service; class-5 repairs, not less than one-fourth of such service.

(Each of above classes may include, in addition, initial application of stoker, superheater, or outside valve gear, and conversion from compound to simple locomotive or from one type to another.)

<sup>2</sup> Running repairs unclassified; divided into those requiring 24 hours or over and those requiring less; commonly referred to as heavy and light, respectively. Usually such repairs are made in the roundhouses and by others than the shop forces.

eration which immediately led to the contract was that, according to his figures as of the end of federal control, 261 locomotives were then undergoing class repairs, 340 were awaiting such repairs, and 724 were due for them a month later, with an accompanying pressure for motive power to handle the volume of traffic. His insistence that the repairs could not have been made without increasing respondent's shop facilities was amplified by the statement that most of the shops were working double shifts and that the "controlling machines were up to their capacity, in three tricks in most cases."

The contract was on a cost-plus basis, that is, the cost of materials, at stipulated prices, and of direct labor, plus 90 per cent of the distributed labor cost to cover all overhead expense, plus 15 per cent of the whole for profit. All scrap material resulting from the work was to become the property of the Baldwin plant, and respondent was to bear all freight charges on materials and on the completed locomotives. Deliveries to respondent were to be made within three to four months after receipt of the first locomotive at the Baldwin plant, barring certain contingencies; and in fact commenced in April and ended in September.

The aggregate cost of the repairs under the contract, upon final audit, is stated by the witness to have been \$4,496,820. This figure, however, does not include the cost of inspection in that connection, represented by a force of 32 inspectors kept by respondent at the Baldwin shops for that purpose during the contract period and whose maintenance was chargeable wholly to the repair work. Taking types of locomotives so repaired, the contrasted cost per H-9-s (freight) locomotive for class-3 repairs in respondent's Altoona, Pa., shops is given as \$9,453, as against \$25,799 for each of 13 repaired by Baldwin. For like repairs per L-1-s, a somewhat heavier type of locomotive, the cost at Altoona is given as \$9,989, as against \$21,692 for each of 15 at Baldwin's. The figures for Altoona, however, include allocations to overhead on the Baldwin basis as far as respondent has corresponding items; on respondent's own basis of accounting, including items directly entering into the work, the respective costs are shown as \$8,452 and \$8,892. Even at the higher figures, the exhibited excess costs, exclusive of the supervision, approximate \$16,000 and \$11,000, respectively, per locomotive.

Briefly, respondent bases the claimed necessity for invoking the aid of the Baldwin plant upon the condition of its motive power at the end of federal control, the inadequate capacity of its own shops for making the requisite class repairs, and the then existing and prospectively increasing volume of traffic. Of the array of figures and other data introduced by the several witnesses, apart from some irreconcilable conflicts in the evidence, much is without probative value in

respect of the real questions. The only practicable means of determining the issues seem to lie in comparisons of conditions, performances, and results, using such factors as the record affords; and as but portions of the available material go back of the period of federal control, the years 1919 and 1920 will be taken for the purpose.

At the outset the matter of ascertaining whether the 200 locomotives could have been repaired in respondent's own shops, giving consideration to conditions which obtained at the date of the Baldwin contract, is complicated by respondent's widely varying statements of the capacities of its shops for class repairs and by the testimony of its witness that those indicated capacities depend materially upon the heavy running repairs the shops are called upon to make. While testifying that such running repairs are more or less frequently made in the shops, and that in some degree class repairs are made in the roundhouses, he could give no estimate of the extent of these interchanges.

For August, 1918, respondent reported to us a monthly capacity aggregating 627 class repairs in 38 shops. A like report was made about the same time to the Railroad Administration; and in the same year an aggregate rated monthly output of 561 class repairs was reported, the latter report omitting the shop at Toledo, Ohio, included in the former as good for six class repairs monthly, and reducing the estimated capacities of others of the indicated shops. As of January, 1921, respondent reported to us an aggregate monthly capacity for 580 class repairs in 28 shops. The list includes the Juniata shop, near Altoona, with a rated output of 30 class repairs, originally built for construction work and subsequently, apparently some weeks or months after federal control, used for repair work; but the list omits 15 shops which aggregated 259 class repairs during the first nine months of 1920, an average of nearly 29 per month. In July, 1918, respondent's witness, then a Railroad Administration official, reported to the regional director that 13 shops on the lines east of Pittsburgh, Pa., under the witness' supervision, were capable of a monthly output of 300 class repairs. Finally, a circular letter from the witness, as chief of motive power, to general superintendents of motive power, March 3, 1920, one week before the Baldwin contract was signed, specified by company shops the monthly output of class repairs which it was desired to maintain as the minimum, with a stated total of 525. The proposed output was based upon an estimate of 317 for the lines east and 208 for the lines west, in a total of 31 shops.

If the several estimated capacities were contingent upon freedom from interference by heavy running repairs, and such repairs were and are commonly made in the shops, the reports were more or less

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misleading; but that this contingency need not affect the proposed output of 525 class repairs per month is evidenced by the following extract from the witness' testimony:

I think that you can expect this output of 525 every time you push, and you can take care of the running work, just as I indicated in that estimate of Mr. Markham's [regional director] of 800, to which if you add the lines west estimate \* \* \* you get very close to the figure I am giving you now.

Concerning the condition of motive power and the outlook for its rehabilitation at the end of federal control, respondent stresses the then estimate of 724 locomotives to fall due for class repairs in one month's time, together with a total of 601 locomotives then in and awaiting shop for such repairs according to one of its exhibits and 540 according to another. The first exhibit also shows 670 locomotives estimated, as of the last day of the preceding month, January, to be due for class repairs after a month's further service, together with a total of 463 then in and awaiting shop according to the same exhibit and a total of 413 according to the other. It was admitted that such estimates necessarily are uncertain, and it appears that of the 724 particular locomotives referred to but 253, and a total of but 479 from all sources, were taken out of service by the end of the ensuing month. Indeed, during the months of February to June, 1920, inclusive, an average of but 490 locomotives was taken out of service for class repairs, including the 200 sent to the Baldwin plant. Viewing the situation from another angle, as of the end of February, 1920, the estimate also included the locomotives expected to fall due by successive monthly periods up to 12 or over; and, taking the figures shown for the first six months, the average would have been a fraction in excess of 536, assuming the estimates to have been dependable.

The investigators' figures, taken from the sources hereinbefore mentioned, show, as of February 28, 1920, 247 locomotives in shop and 464 awaiting shop for classified repairs, a total of 711; 598 in shop and 799 awaiting shop for all repairs, including class, requiring 24 hours or over, a total of 1,397. Respondent shows, as of the same date, a total of 1,291 in and awaiting shop for all repairs requiring 24 hours or over. The latter total includes the 540 in and awaiting shop for class repairs before mentioned, but if the 601 shown by respondent's other exhibit were used the total for all repairs would be 1,352. In any event, as of the corresponding date in 1919 there were 785 locomotives in and awaiting shop for class repairs, embraced in a total of 1,390 for all repairs requiring 24 hours or over. As far as these factors are concerned, therefore, the situation as to class repairs was materially better at the end of federal control, whichever of the above figures be used, than at the corresponding time in 1919; and with this



preponderating advantage in the class repairs, the 1920 situation as to all repairs was much more favorable regardless of the comparison employed. As will appear, respondent's shops were readily equal to the 1919 demands.

Respondent cites a decline in the output of its shops during the first two months of 1920, the last months of federal control; although its witness testified that this was a seasonal situation usual at the end of the winter months and because heavy running repairs are given precedence in order to restore the greatest number of locomotives to serviceable condition. This explanation is borne out by the following tabulation of monthly output of class repairs at respondent's shops during 1919 and 1920 taken from the indicated exhibits, corrected:

Month.	Investigators.		Respondent.		Month.	Investigators.		Respondent.	
	1919	1920	1919	1920		1919	1920	1919	1920
January.....	411	475	395	458	August.....	524	565	504	547
February.....	358	331	346	318	September.....	508	503	482	491
March.....	373	499	300	487	October.....	501	526	469	514
April.....	495	501	474	491	November.....	473	463	463	446
May.....	549	564	522	552	December.....	503	434	484	422
June.....	524	544	500	528	Average.....	480	496.83	480.5	483
July.....	542	557	527	541					

While respondent's figures are uniformly the lower of the two sets, both are referred to in its brief and both show an improvement in 1920. If respondent's figures were to be accepted as accurate, the average output fell 42 below the desired minimum of 525, obtainable by pushing, and the attainment of that minimum would have taken care of the 200 locomotives within five months, well within the time consumed by the Baldwin plant. Using the investigators' figures, about seven months would have sufficed. These conclusions, however, embrace the months of January and February. Commencing with March and taking such of the months only as fell below 525, the 200 additional locomotives could have been repaired by the end of December, according to the investigators' figures, and by the end of November, according to respondent's. This also assumes 525 to have been the maximum potential monthly output, notwithstanding the better performances in May, June, July, and August according to respondent's figures—disregarding those of the investigators—during a period when the monthly output of unclassified repairs exceeded the monthly average for the year, as next hereinafter shown.

Adverting to the matter of the contract, respondent's witness testified that by obtaining relief on class repairs he could "throw the line all on to the unclassified and get rid of it," and that relief was neces-

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sary, not only as to classified repairs, but as to unclassified repairs in 1920 over 1919. The following table shows respondent's monthly output of all repairs, including class, requiring 24 hours or over in 1919 and 1920, as reported to the Railroad Administration:

Month.	1919	1920	Month.	1919	1920
January.....	7,325	5,311	August.....	5,529	4,502
February.....	7,425	4,415	September.....	5,246	3,814
March.....	7,777	4,942	October.....	5,838	3,314
April.....	7,634	5,468	November.....	5,670	3,026
May.....	7,617	5,808	December.....	4,966	2,799
June.....	7,410	5,133			
July.....	7,703	4,654	Average.....	6,682	4,422

The foregoing discloses that, as against respondent's increased output of class repairs in 1920 over 1919—5 per cent, according to its own figures—the 1920 output of all repairs requiring 24 hours or over fell 33.6 per cent below the 1919 output. In other words, notwithstanding the relief obtained through the Baldwin contract and the stated necessity for bringing up the unclassified repairs, the latter slumped badly in 1920 as compared with 1919; and this slump would seem to negative any conclusion that there was as much interference with class repair work in 1920 as in 1919.

In this connection, the record discloses that about July, 1919, the Railroad Administration took up with respondent's witness and other local representatives the matter of the defective condition of motive power and cars on the system, as the result of which the percentage of locomotives out of service was reduced, by September, from about 22 and a fraction to about 12 and a fraction, the reduction with reference to class repairs having been from 8 and a fraction to 6 and a fraction per cent. Thereafter through the year the number out of service rose and fell, but the year ended with a much better showing than at the time of the conference; better, in fact, than at the end of 1920. A slight amount of repair work was done outside respondent's shops in 1919, represented by 0.16 per cent of the total expenditures for locomotive repairs, as compared with 4.6 per cent in 1920. During federal control there was no decrease in respondent's shop facilities, but rather some increase, even if small.

Respondent rightly contends that the expediency of the Baldwin contract must be considered in the light of the contemporaneous and prospective volume of traffic, which, according to the event, is shown in loaded freight car-miles and in locomotive-miles operated. The latter is relied upon by respondent, the following table of locomotive mileage exhibited by it contrasting the 1919 and 1920 performances by months:

Month.	1919	1920	Month.	1919	1920
January.....	17,258,092	17,468,082	July.....	17,089,513	18,444,888
February.....	13,979,449	16,081,738	August.....	17,403,519	18,634,888
March.....	14,760,462	18,797,164	September.....	17,435,710	18,111,189
April.....	14,409,090	18,833,808	October.....	17,922,010	18,180,088
May.....	15,064,145	16,701,671	November.....	16,871,392	17,422,061
June.....	15,843,878	17,467,441	December.....	16,887,078	17,743,888

It will be observed that in each month of 1920, save April, when the so-called outlaw strike occurred, the locomotive mileage exceeded that for the corresponding 1919 period; and, perhaps curiously, substantially the same rate of increase appears in November and December, 1920, after the business depression had manifested itself. The mileage for the entire year 1920 was 7.4 per cent greater than for 1919. Among other details, the tabulation discloses an 8 per cent decrease in February, 1920, as compared with the preceding month, and a more pronounced corresponding decrease in 1919. January, 1920, increased 1.2 per cent over January, 1919, while for the months of February the 1920 increase over 1919 was 14.9 per cent. Not so separated, and looking at the figures as indicating the comparative traffic trend from the beginning of the year up to the time of the contract, the mileage for the first two months of 1920 showed an increase of 7.1 per cent over the corresponding period of 1919, or slightly less than the percentage increase for the full year.

The traffic situation also is illustrated by an exhibit showing the loaded freight-car mileage from September, 1913, to March, 1921, inclusive, submitted by respondent at the request of the interveners and according to which the first two months of 1920 exceeded the corresponding 1919 period by 7 per cent.

In turn, the foregoing performances should be considered in the light of other and related factors, more especially motive power availability. The relationship may first be tested by the indicated available locomotive service months, although based upon evidently more or less inaccurate estimates, upon the assumption that one period's errors may approximate another's. At the end of January, 1919, the available service months were 43,990 and were 48,793 at the corresponding time in 1920, an increase of 10.9 per cent. At the end of February, 1919, they were 42,604, and at the corresponding time in 1920 were 46,266, an increase of 8.6 per cent. While the estimates for successive months naturally are not cumulative, the average of the percentage increases in the first two months of the respective years was 9.75, or somewhat greater than the percentage increase in the locomotive mileage for same periods. There was a decline in the percentage rate of increase in February as against January, but, as expressed in percentages of increase, the

showing for the available service months still was better than that for the locomotive-miles operated.

A further indication of what might have been accomplished may be found in the fact that at the end of March, 1919, the available service months were 42,109, the lowest shown in 1919 or 1920, and by about the end of August, 1919, were brought up to 52,478, an increase of 24.5 per cent, during which period the locomotive-miles operated increased 8.3 per cent, the maximum mileage attained approximating the average mileage for the years 1919 and 1920 combined.

Again, as against 711 locomotives in and awaiting shop for class repairs, and a total of 1,397 in and awaiting shop for all repairs requiring 24 hours or over, at the end of federal control—the highest of the figures shown of record—there were 785 locomotives in and awaiting shop for class repairs and a total of 1,390 so due for all repairs at the corresponding time the previous year; and the 1919 situation was relieved in the company shops in a few months, with a concurrent rising tide of traffic. Otherwise stated, as against about 18 per cent of the motive power out of service at the end of federal control, with an upward trend of traffic—admittedly reaching the danger point—something like 22 per cent of power out of service in 1919 was reduced to about 12 per cent by respondent's facilities, with an accompanying traffic increase.

A further contention is that the invocation of outside aid was justified by the event, in which connection respondent cites its inability to furnish cars during the summer of 1920 and to illustrate which it exhibits the cars requisitioned and furnished and the lay-over of cars in yards for the last 10 months of the year. But nothing is offered to attribute the situation to motive-power conditions, without regard for the many other matters that might affect that situation, such as the "outlaw strike" which aided in bringing the April lay-over up to 91.9 per cent, the highest shown. The lay-over for March approximated that for the entire year; and, whereas it was stated that "anything over 50 per cent represents abnormal condition," it is of interest that from July to December, inclusive, the lay-over exceeded that percentage and that during each of those months respondent made reductions in its shop and roundhouse forces, in all a very considerable number. At the same time, fully conceding the necessity for maintaining the motive power then and at all times, the real question is, whether respondent could have done the repair work in its own shops.

It is not questioned that the cost of the contract work exceeded that for which the work could have been done in respondent's shops, assuming the adequate capacity of the latter. The investigators com-

pute the excess cost, including the pay of the 32 inspectors, deducting additions and betterments made at the Baldwin plant, and making certain other appropriate adjustments, including an allowance for overhead expense, to have been \$3,173,982.33, a little less than the total indicated by respondent's figures. Respondent secured no other bids for the work, and the possibility of obtaining the repairs at other contract shops at a lower cost can not be determined.

Respondent's records indicated that, of the 200 locomotives in question, 5 received class-2 repairs, 153 received class-3 repairs, 8 received class-4 repairs, and 39 received class-5 repairs. A check of the repairs actually made, however, disclosed that 44 locomotives shown as having had class-3 repairs in fact received class-4 or class-5 repairs, although this does not mean that respondent paid class-3 prices therefor. The check also indicated that the Baldwin repairs and those currently made in respondent's shops were comparable in character.

To a criticism that respondent paid twice for some of the repair work defectively done in the Baldwin shops in the first instance and there replaced or corrected, respondent answers on brief that the payments were in strict conformity with the contract, and adds the comment that it would be interesting to know if the representatives of the Commission think that in like circumstances the railroad should make a deduction from the wages of its employees. The comment is wholly beside the question, especially as the payments to Baldwin were not in fact in accordance with the terms of the contract. That instrument provided, as before stated, for the addition of 90 per cent of distributed labor to cover all overhead expenses, including "rentals, \* \* \* errors or defects," etc.

Weighing one thing with another, the record indicates to us that at best respondent was precipitate in resorting to outside shops, at an added expense of more than \$3,000,000, almost immediately upon its resumption of its property. It is obvious that every consideration of good management dictated the restoration of the locomotives, with earning capacities ranging upward of \$12,000 to \$17,000 monthly, to a serviceable condition without undue delay, but the same considerations also dictated the accomplishment of that end without unnecessary expenditures. Upon a careful review of the record we conclude that a more thorough survey of respondent's facilities in the light of past demands and performances would have disclosed a capacity to do the work itself within a reasonable time by an appropriate coordination of efforts and by such added exertions as relieved the situation in the preceding year. The interveners' imputation to respondent of an ulterior or dishonest motive has no support in the record.

McCHORD, *Chairman*, concurring:

I deem it unnecessary to add anything to the report of the majority on the merits, but desire to correct any possible misapprehension which may result from the dissenting interpretations of that report. The majority distinctly recognize, as indicated in the report, that the award of the contract is to be considered in the light of the contemporaneous circumstances, and the conclusion reached is in no sense or degree based upon subsequent developments. That conclusion is, of course, predicated upon the facts disclosed by the record, as is usual and necessary in proceedings pending before us. The necessity for the contract, at admittedly and seriously increased costs for the work performed, is considered by contrasting the motive-power demands that faced respondent upon the resumption of private control with the like demands in 1919 and the accomplishments in rehabilitation of the power in that year as affording the best criterion of what might reasonably have been expected in respondent's own shops to meet the prospective requirements with the advent of private control. In the survey of the situation the majority report also takes due account of the respectively available power and of the contemporaneously increasing traffic. As pointed out in detail, with an even greater burden of class repair work impending on March 1, 1919, and a concurrently mounting volume of traffic, respondent met the demands in its own shops and within a brief period during that year brought its bad-order power within safe limits. In this connection it may be observed that, as shown by the tabulation of all repairs made in 1919 and 1920, the decline in total repairs, classified and unclassified, continued steadily from the beginning to the end of the year 1919, and in 1920 there was the same general decline in output of all repairs from the beginning to the end of that year. In other words, the decline in the output of unclassified repairs was not confined to the relatively brief period in 1919 when special attention was given to class repairs.

As I have stated, the conclusion of the majority is not based upon developments in 1920 after the contract had been made. Figures were submitted by respondent designed to show that the events of the year 1920 justified the contract. Similarly, other figures are set forth in the majority report to show, first of all, that the decline in the output of class repairs in respondent's shops in the opening months of 1920, particularly February, just preceding the award of the contract, was a seasonal occurrence, due to the fact, as explained by the chief of motive power, that running repairs are given precedence in order to restore to service the greatest number of locomotives at the end of the winter season. The figures are further employed to show that, while the system shops did better in 1920

than in 1919 in the matter of class repairs, the 1920 output of unclassified repairs fell seriously below that of 1919, as did the aggregate of all repairs—and this notwithstanding the testimony of the chief of motive power that by obtaining help on classified repairs the line could be devoted more effectually to the accumulated unclassified repairs. The discussion of matters extending beyond the date of the contract is only toward confirmation of the outlook when the contract was let. Respondent disclaims any question of efficiency in its own shops as entering into the award of the contract, and it therefore appears that its own shops were at least potentially equal in 1920 to their 1919 performance.

The record denotes that the contract, made almost immediately upon the resumption of private control, was entered upon without that precautionary survey of respondent's own facilities and equipment and of their capacity which mere good judgment and a fit sense of obligation should have dictated. This is regrettably emphasized by the showing that the invocation of outside assistance was not concurrently backed by appropriate efforts in respondent's own shops.

The investigation itself was entered upon by unanimous vote of the Commission, and I think it rather late in the day now to question that action. Indeed, by the interstate commerce act itself we are expressly authorized to inquire into the management of the business of all common carriers subject to the act, and directed to keep ourselves informed as to the manner and method in which the same is conducted, and empowered to obtain from the carriers full and complete information necessary to enable us to perform the duties and carry out the objects for which this Commission was created. The authority to inquire is not limited to specific matters. Improvident operating costs are always of concern to us, and to the public which ultimately pays the bills, as in the end they have a very material bearing upon the carriers' revenue needs, which must be met by increased rates, security issues, or loans from the general railroad contingent fund. For a number of years the carriers of the country have repeatedly and sharply brought to our attention the matter of high operating costs as entitling them to increased rates or other relief, and I do not understand that we exceed our charter when at any time we undertake to ascertain if money in large amounts has been, or is being, needlessly expended. Moreover, the act also expressly provides:

That in the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that the carriers \* \* \* will, under honest, efficient and economical management and reasonable expenditure for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal as nearly as may

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be to a fair return upon the aggregate value of the railway property of such carrier held for and used in the service of transportation \* \* \*. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation.

In this provision the matter of honest, efficient, and economical management is the basic consideration upon which the rate of return and the necessity of enlarging the transportation facilities of the country are dependent; but, even under that provision, I do not understand that we may lawfully investigate the question of management only when it suits the purpose of the carriers to file applications for increased rates or when a specific question of enlarging transportation facilities is presented. That fundamental question is always open to investigation.

I note the criticism that we are assuming to set up our judgment upon a matter peculiarly within the competency of experienced operating officials and upon which they were called upon to exercise their best judgment in an emergency which demanded prompt action. It seems to me to require no expert judgment to determine, as between system shop repairs at approximately \$9,000 per locomotive and contract shop repairs at approximately \$25,000 per locomotive, the necessity for a reasonably definite ascertainment, before entering into such a contract, that past demands and performances were inconsistent with the prospect of doing the work in season in respondent's own shops. The facts developed of record seem to me to disclose the contrary to have been true. The majority report recognizes the prime importance of keeping the motive power in serviceable condition at all times, but also recognizes that this consideration does not justify expenditures for the purpose that can be avoided by appropriate effort.

While the statement in the majority report with reference to ulterior motives is made in response to an unsupported charge made by the interveners, I think it wholly immaterial. That question has not been inquired into by us, our purpose being to ascertain whether the 200 locomotives could seasonably have been repaired in respondent's shops and whether the amount paid the Baldwin Locomotive Works was excessive by comparison. It is a familiar principle that the motive with which an act is done does not affect its legality.

EASTMAN, *Commissioner*, concurring:

While I am in general agreement with the report of the majority, there are certain matters upon which more emphasis might well be laid, and to these I wish to direct attention. The fact disclosed by



the investigation which is of chief public interest, it seems to me, is the discrepancy between the cost of the contract work done in the Baldwin shops and the cost of precisely similar work done in respondent's own shops.

In this proceeding respondent has disclaimed any contention that its employees were inefficient. Nevertheless the work in its shops during 1920 was carried on under the so-called national agreements, entered into during federal control, which have so frequently been criticized as resulting in burdensome and uneconomical working conditions. Yet we find, using respondent's own figures, that the cost of the same class of repairs on a certain type of locomotive was \$9,453 at its own shops as compared with \$25,799 under the Baldwin contract, an excess for the latter of 173 per cent, without including the cost of the 32 inspectors stationed by respondent at the Baldwin shops during the contract period. For another type of locomotive the cost of the same class of repairs was \$9,989 at respondent's own shops and \$21,692 under the Baldwin contract, an excess for the latter of 117 per cent. These figures include such allocation of overhead expense to the cost of the work at its own shops as respondent deemed proper in order that the two sets of figures might be fairly comparable. Our own accountants, after an analysis of the records, reached the conclusion that the excess cost of repairing the 200 locomotives under the Baldwin contract as compared with the cost of doing the same work in respondent's shops was more than \$3,000,000, or more than \$15,000 on the average per locomotive.

Lest it be thought that the discrepancy was in any measure due to heavier work, class for class, at the Baldwin plant than in respondent's shops, it may be said that such a claim was made, but our check of the records showed it to be without basis. Nor was the discrepancy due solely to any difference in necessary overhead expense, for on the contrary it appears to have been due primarily to a difference in labor costs. Our accountants found that the time consumed in making the repairs at the Baldwin plant, over and above the time required for similar repairs at respondent's own shops, was more than 36 days per locomotive. They also found that the labor excess at the Baldwin plant was 93 per cent for class-2 repairs, 140 per cent for class-3, 152 per cent for class-4, and 137 per cent for class-5 repairs. Indeed, the only justification offered for the excess cost which seems to have possible merit is that the Baldwin plant was not experienced in or well-equipped for repair work, an explanation which I find it difficult to believe can account in any large measure for the extraordinary discrepancy disclosed, especially if there be any foundation whatever for the criticisms which have so frequently been offered with respect to the national agreements.

But this discrepancy in cost is not the only startling thing about the Baldwin contract, for the contract itself and the manner in which it was interpreted are startling. It appears that no competitive bids were sought and that the contract was made on what has come to be known as the "cost-plus" basis. That is to say, the charge was based on the cost of materials and labor, plus an arbitrary 90 per cent of the labor cost to cover all overhead expense, plus an arbitrary 15 per cent of the whole for profit. It further appears that the 90 per cent of the labor cost to be added for overhead was to include "errors and defects." Notwithstanding this provision, in hundreds of cases where, because of errors or defects, it became necessary to do the work a second time, respondent paid for the work entailed in remedying the error or defect, and this labor cost was included in computing the 90 per cent for overhead and the 15 per cent for profit.

I base this statement upon a letter placed in evidence from one of respondent's assistant motive-power accountants to his superior officer, reading in part as follows:

In connection with the Baldwin contract there are hundreds of cases where the work was done the second time, which I presume we will have to pay for, since the money was actually paid out and the work actually performed,  
\* \* \*

At the bottom of this letter was a penciled memorandum from the superior officer reading in part thus:

As I see the matter we will have to pay Baldwin for all work they did on those locomotives, even though it may have been done twice due to the inefficient methods of handling the work.

No evidence was submitted in any way controverting these statements, nor was it denied that this was the construction placed by respondent upon the contract.

In other words, as I understand it, it is conceded, not only that respondent let the contract without competitive bids, but also that it agreed to an interpretation of the contract which made it possible for the Baldwin company actually to profit by negligent or inefficient work. The more of such work that it did the greater the amount of its 90 per cent for overhead expense and the greater the amount of its 15 per cent for profit.

I submit that these are important facts for the public to know. If our great railroad companies are at such a disadvantage in dealing with outside supply companies that they must agree to arrangements of this nature, it lends force, among other things, to the suggestion recently made by the National Association of Owners of Railroad Securities that much expense could be saved if the railroad equipment of the country were pooled and all repair and construc-

tion work handled through centralized agencies. The facts so disclosed also make me unwilling to subscribe to the statement of the majority with respect to respondent's motives in the premises. I do not understand that motives were under investigation and no finding, therefore, upon this matter is appropriate. But if it were our duty to make such a finding, I confess that the evidence has not left me free from doubt as to what the finding should be.

The dissenting opinions object to the conclusions of the majority, if I read them aright, on three principal grounds:

(1) That we are exceeding our lawful authority in making the investigation.

(2) That from the meager and "incomplete" record an intelligent conclusion can not be derived, and even if such a conclusion could be reached, we are not competent to reach it.

(3) That in any event the conclusion which the majority have reached is wrong.

Taking up these points one by one, it may be noted that the investigation was instituted on January 3, 1921, by unanimous vote of the Commission. Our authority to make such an investigation was not then questioned. The equipment-repair contracts of respondent and other carriers had become the subject of discussion, not only throughout the country, but in the Halls of Congress. It was desirable that the facts should be known, and it was particularly desirable because, during much of the life of these contracts, the United States was the guarantor of railroad income. The facts which I have set forth at the beginning of this opinion are in themselves sufficient justification for the investigation. If we are without power to obtain and make public such facts, it would be the duty of Congress to confer power upon us. But I entertain no doubt as to our authority; it has not been questioned by any of the respondent carriers.

The record of the investigation is far from meager. Respondent was given opportunity to present all the evidence that it desired to present, and it took ample advantage of the opportunity. As for our competency to pass upon this evidence, I concede that we are not expert railroad operators, but neither are we expert railroad traffic officers or accountants or engineers or financiers. Yet we pass upon rate, accounting, valuation, or financial matters every day. If it were necessary for judges or juries to be experts in the subject matter of every lawsuit, what would become of our courts? The theory of any judicial investigation or proceeding is that those who are expert will be able to impart their knowledge, so far as it pertains to the question at issue, and that those who sit in judgment will be able to weigh the evidence so presented. We are as able to weigh the evi-

dence in this proceeding as we are in many of the other complicated and technical cases upon which we are continually obliged to pass.

Coming, then, to the conclusion of the majority, "that a more thorough survey of respondent's facilities in the light of past demands and performances would have disclosed a capacity to do the work itself within a reasonable time by an appropriate coordination of efforts and by such added exertions as relieved the situation in the preceding year": Whether or not this is true is a matter of much less importance, as I view it, than the disclosure of the facts respecting the cost which respondent was obliged to meet under the contract and its interpretation of that contract. I also agree with the dissenting opinions that the necessity of outside contract work is a matter to be judged in the light of the situation by which respondent was confronted, or thought that it was confronted, at the time when the contract was made. Subsequent events are pertinent only so far as they throw light upon conflicting or doubtful evidence as to the facts at that time.

Nevertheless, I agree with the conclusion of the majority. Of particular significance, it seems to me, is the evidence with respect to the capacity of respondent's shops for repair work. In 1918, when it was necessary to secure accurate data from the railroads as to this capacity in view of war necessities, the officials then in charge of respondent's shops advised the Railroad Administration and advised us that the monthly capacity for classified repairs was 627 locomotives. In January, 1921, however, after this investigation had been instituted, respondent reported this capacity as 580 per month. Yet during federal control the Railroad Administration made capital expenditures on respondent's shop buildings, shop machinery and tools, engine houses, etc., totaling \$20,822,998. Moreover, at the hearing respondent placed the capacity at a maximum of 525 per month, on the ground that unclassified repairs might interfere with the output of classified repairs. The evidence, however, does not show that at the time the contract was made respondent had reason to anticipate an abnormal load of unclassified repairs. On the contrary, the record does show that the monthly average of classified and unclassified repairs in 1920 was 4,432, as against 6,682 in 1919, 5,867 in 1918, and 4,482 for the last 10 months of 1917. The pressure of unclassified repairs in 1920 was manifestly lighter than in the other years, and this was true of the months immediately following the resumption of private control. The monthly average of such repairs, according to respondent's own figures, was 4,707 in the first six months of 1920 as compared with 7,103 in the corresponding months of 1919. I am unable, therefore, to accept the statement that the maximum capacity

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of respondent's shops for classified repairs at the time the contract was made was but 525 per month.

Of significance, also, is respondent's estimate that on February 28, 1920, there were 724 locomotives in service which were good for but one month's service, when it is considered in the light of the fact that on March 31 it was found that only 253 of these locomotives had been taken out of service, that 168 were good for another month's service, 35 for two months, 40 for three months, 46 for four months and 174 for five or more months. Granted that estimates of this character are necessarily inaccurate, I think it is a fair conclusion, in view of the very large element of error, that the estimate of February 28, 1920, was not thoroughly or carefully made.

I am further impressed by the fact that the evidence indicates that motive-power conditions were substantially better in February, 1920, than in the corresponding month of the previous year. There was, for instance, an increase of 8 per cent in locomotive service months available. It is true that present and prospective traffic were heavier in February, 1920, than in February, 1919; but in the summer of 1919, when traffic began to grow heavy, the evidence shows that the Railroad Administration was able, without seeking outside assistance, by concentrated effort to effect a very marked improvement in a comparatively short time. The record shows that at the end of March, 1919, the number of locomotive service months available was less than at any time in 1919 or 1920. Yet by the end of August, 1919, the number had increased to a point higher than at any time in either year.

In one of the dissenting opinions, the statement is made that "during the first six months of 1920 the shops were working to full capacity and working overtime." As a matter of fact there is no convincing evidence that there was any considerable amount of overtime work. It clearly appears that the men in the shops, during this period, were not put on 9-hour shifts, and, indeed, that this means of relieving the situation was not even considered. Moreover, the statement that the shops were working to "full capacity" is inconsistent with the testimony that during this period respondent was in need of, and was continually seeking, additional men for its shops. Mr. Wallis testified that in most cases his controlling machines were worked to capacity. Yet the record shows that at the same time respondent claims to have been making diligent efforts to increase its shop forces.

Finally, I am impressed by the fact that, while traffic over the Pennsylvania continued to be heavy to the end of the year 1920, in July of that year respondent felt free to reduce its shop forces materially, and this reduction continued throughout the fall.

POTTER, *Commissioner*, dissenting:

At the end of federal control the Director General turned back to the respondent a large number of bad-order locomotives at a time when great increase of traffic was in prospect. Faced with the serious consequences of a shortage of power, the respondent, on March 10, 1920, in order to make repairs more rapidly than they could be made in its own shops, contracted to have 200 of its 7,800 locomotives repaired in the best outside shops available. The majority report finds that later this decision was found to be a mistake; that the locomotives could have been repaired in the respondent's own shops by the time they were needed and at a lower cost than the amount paid for the outside work. This alleged mistake of judgment is the sole basis for the criticism which the majority report makes. The good faith of the officials of the respondent is not questioned, and they are completely exonerated by the majority report from every improper motive.

As there is no finding of bad faith the promulgation of our report raises very serious questions as to the function and power of this Commission. I deplore the taking on of work which I believe is not intended for us. The duty of this Commission to consider the limitations upon its authority is of such vital importance to the public, if our system of regulation is to endure, that I think we can well afford to discuss it in the forum of our reports.

We can arrive at a just conclusion only by putting ourselves in the position of the managing officials on March 10, 1920, when they contracted for the outside work. It is a manager's duty to do the thing which his judgment, based on his knowledge and experience, at the time he is called upon to act, suggests that he should do. For him, that decision is right and free from criticism for all time which seems right when made, no matter how it turns out later. What would we have done if we had been in his place, with his perplexities, doubts, and forebodings, is the only fair and proper question for us to consider. If the inquiry before us were thus limited, as obviously it should be, there is not in the record any basis for criticism. In fact, the majority report seems to admit this, for the main reliance of the majority report is upon testimony, not as to the conditions which actually confronted the officials when they made their decision, but as to conditions and happenings later. If later it had turned out (which it is shown it did not) that the work could have been done at home, it by no means would follow that the March decision was not the correct decision for March. Upon the question as to what was the proper decision in March, with March prospects, uncertainties, and fears, testimony as to what were subsequent realities and certainties was incom-

petent and immaterial. Its receipt and consideration in this case did violence to essential rules of evidence, law, and justice, which we should observe.

In working toward a conclusion we are bound to accept the facts that the chosen representatives of the stockholders and directors of the respondent, brought up in its management, recognized throughout the transportation world as men of high skill, charged with the responsibility of managing its affairs, acting in good faith in accordance with their judgment, decided it was best to send this work out. I can not see that we are charged with any duty or responsibility which requires us to review their judgment, or that we have any authority to do so. We are not competent to review it. These officials understood the needs of their company as we can not. They understood the territory they served, and its commercial and industrial conditions, and the probabilities of tonnage as they existed when it was decided to send the work out. They understood their shops and forces and knew, far better than we could, how to handle their labor. No one knew what might happen at almost any minute, and the best preparation was required at every point. If they felt it was necessary to make their company independent and strong in the face of what threatened, or that it was good policy to build independent resources, free from outside interference, we have no right to say that, from the standpoint of company policy or of public interest, their conclusion was wrong. The responsibility was theirs. We should not reverse their judgment upon a record made at this late date, which, in the nature of things, can not possibly give us even an outline sketch of the picture which confronted them.

We must remember that the steam locomotive is the heart of American industry, without which railways can not operate and industry, in a broad sense, can not be carried on. There are about 70,000 locomotives in the country. Each one of these locomotives is responsible for its part of the transportation of the nation, of the successful operation of the industries of the nation, of the supply of food for the nation, of the furnishing of employment to all the millions of laborers. Almost it might be said that upon each one of these locomotives depends one seventy-thousandth part of the prosperity of the nation and the protection of the nation's property, peace, and order. The value to the nation of one month's service of a locomotive in busy times, is worth far more than the cost of the locomotive itself. There is never an excuse for any carrier to run any risk with respect to its motive power. The vital and universal need of all important industries in this country is transportation. Transportation facilities are idle and investments in them are wasted in the

degree that power fails. Chance may be taken with cars, and all other things, but never with locomotives. We will perform our best service only if we make this clear. The one thing that never should be excused in a manager is avoidable risk regarding the effectiveness of his motive power. Particularly in times of stress he should not stop to make close estimates or draw fine distinctions as to how or where repairs should be made or as to relative cost. He should consider first how to be absolutely certain under every possible contingency to have his power ready.

We are equipped for regulation within the law, regarding rates and other matters clearly within our proper function and with which continually we are called upon to deal. We are not equipped for problems of management and operation. These are beyond the lines that define our field. The idea that we, a commission of 11 men, brought from different walks, none of whom was selected because he had any knowledge regarding practical railway operation, can, in spite of our inexperience, two years after the fact, on an incomplete record of conditions, put ourselves in the chair of the general manager or master mechanic of the largest system of railroads in the United States, and say how, in perilous times, he should have handled a very difficult operating problem, and justly criticize him for error, does not find favor with me.

We have been given no roving commission to investigate and criticize. Federal control ended at midnight, February 29, 1920, and under the law in effect since then the carriers are to be managed by the chosen representatives of their owners and not by us.

The Supreme Court of the United States in *Interstate Commerce Commission v. C. G. W. Ry. Co.*, 209 U. S., 108, at page 118, said:

It must be remembered that railroads are the private property of their owners, that while, from the public character of the work in which they are engaged, the public has the power to prescribe rules for securing faithful and efficient service and equality between shippers and communities, yet, in no proper sense, is the public a general manager.

We are not making any order upon our report and are giving no direction and we have no authority to do either. Our report is only criticism of management where responsibility for management is not on us. No complaint of violation of the law has been made, and we have found no violation. In such a situation I see no right to interfere with criticism and disturb and irritate with expressions of our opinions. If the officers of the respondent have not exercised good judgment, they are accountable to its stockholders, and not to us.

In *Advances in Rates—Western Case*, 20 I. C. C., 807, at page 317, we said:

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We must be conscious in our consideration of these rate questions of their effect upon the policy of the railroads and, ultimately, upon the welfare of the state. This country can not afford to have poor railroads, insufficiently equipped, unsubstantially built, carelessly operated. We need the best of service. Our railroad management should be the most progressive. It should have wide latitude for experiment. It should have such encouragement as would attract the imagination of both the engineer and the investor. Nevertheless, it is likewise to be remembered that the Government has not undertaken to become the directing mind in railroad management. We are not the managers of the railroad.

In *Harriman v. Interstate Commerce Commission*, 211 U. S., 407, at page 419, the Supreme Court admonished us as follows:

We are of opinion, on the contrary, that the purposes of the act for which the Commission may exact evidence embrace only complaints for violation of the act, and investigations by the Commission upon matters that might have been made the object of the complaint. As we already have implied, the main purpose of the act was to regulate the interstate business of carriers, and the secondary purpose, that for which the Commission was established, was to enforce the regulations enacted. These, in our opinion, are the purposes referred to; in other words, the power to require testimony is limited, as it usually is in English-speaking countries, at least to the only cases where the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law.

The procedure we have adopted in making this inquiry can not be supported by the provisions of the transportation act under which honesty, efficiency, and economy of management are to influence the determination of rate scales. We have not proceeded as in a rate inquiry for rate-making purposes. Our report can be of no service for rate-making purposes. It determines nothing respecting the honesty, efficiency, or economy of respondent's management. It deals only with one transaction that occurred two years ago in one branch of carrier operation. A mistake might have been made in this matter and yet the respondent might be the most efficiently operated carrier in the country. There might be warrant in conducting a general inquiry as to carrier efficiency shown by the respondent's operations generally, but the discussion of an isolated transaction under unusual conditions can not be helpful to us on any question we have jurisdiction to determine.

This is one of several investigations we are carrying on of a similar nature and under similar circumstances regarding different carriers throughout the country. They are taking an enormous amount of precious time and are costing many thousands of dollars—without accomplishing any result of the slightest value to anyone.

Criticism of a transaction in a particular situation can do no good. It may do harm. No helpful lesson is to be learned from our action. If in the future the officials again should be confronted

with what seems to them an emergency situation and they recall our criticism in the present case, they would do one of two things—either disregard our criticism and boldly go ahead and do what they thought they ought to do, as they should, or they would say: "We did what we thought was best before and were reprimanded. Now we will play safe. We will try to repair the locomotives ourselves. If we fail, only the public will suffer. The responsibility will be on the Interstate Commerce Commission and our failure will never be known." To encourage such an attitude and to so dissipate ambition and resolution, as it seems to me might be the effect of adopting the policy of our report, would be unwise. Man efficiency more than anything else determines carrier efficiency. Our job is to increase where we can the efficiency of men. To this end, we should stimulate initiative, courage, and prompt action and a willingness to take on and quickly solve big problems. If railway operating officials, responsible for furnishing transportation for the public needs, are to stop before acting and wonder whether we are going to criticize them or not, the result, as far as the country is concerned, will be far worse than the occasional losses which may occur through the courageous and prompt exercise of judgment.

There has been a full hearing. We have had opportunity to ascertain the facts, and if we have not ascertained them all, it is our fault. In impartial investigation, as well as in prosecution, the burden is upon us all the time to obtain all the facts bearing upon the justness of our conclusion. Our own attorney conducted the proceeding—certainly with all the zeal that impartial investigation permitted. The intervening labor organizations had vigorous representation before us. After an investigation so made, no suspicion beyond the facts found by us can be entertained. If the record is not complete, our finding stands condemned. The presumption of innocence until proven guilty prevails before us. The greater the official power the greater the duty to respect and guard the private right.

In the foregoing I have dealt with this case without regard to the testimony as to what happened after March 10, 1920. To exclude such testimony seems to me our obvious duty. If it were proper to consider such testimony my study of it convinces me that the majority view involves a misunderstanding of the record, which, to my mind, demonstrates by subsequent events that the contract in question was justified.

On February 28, 1920, according to data obtained by investigators for the Commission, 247 locomotives were in shop and 464 were awaiting shop for classified repairs, a total of 711; and 598 locomotives were in shop and 799 awaiting shop for all repairs requiring

24 hours or over, a total of 1,397. The respondent shows as of the same date a total of 1,291 in and awaiting shop for all repairs requiring 24 hours or over. The total last mentioned includes 540 locomotives in and awaiting shop for class repairs, but by another exhibit respondent shows 601 locomotives in this category. If 601 be taken as correct, the total for all repairs, according to respondent, would be 1,352. It is true that as of the corresponding date in 1919 there were 785 locomotives in and awaiting shop for class repairs, embraced in a total of 1,390 for all repairs requiring 24 hours or over, but the number of locomotives undergoing and awaiting repairs in 1920 presented a much more serious situation because of the contemporaneous volume of traffic. The locomotive mileage for every month throughout 1920 except April exceeded that for the corresponding 1919 period; and the greatest volume of locomotive mileage occurred in March, 1920, at which time respondent's officials decided to send the work in question to outside shops. In this connection officials of the respondent testify that they had every reason to expect and did expect at that time a great increase in traffic. That such expectation was justified is amply confirmed by subsequent events. The locomotive mileage for the entire year 1920 was 7.4 per cent greater than for 1919. January, 1920, increased 1.2 per cent over January, 1919, while for the month of February the 1920 increase over 1919 was 14.9 per cent. This was cause for much alertness and alarm on March 10. The loaded freight-car mileage for the first two months of 1920 exceeded the corresponding 1919 period by 7 per cent.

Further light on the traffic situation in 1920 is given by another exhibit filed by the respondent showing the total number of cars requisitioned upon respondent's lines and the total number of cars furnished for the months from March to December, 1920. The percentage of requisitioned cars furnished in March, 1920, was 60.5, in April, 56.5, in May, 54.9, in June, 52.7, in July, 51.2, in August, 57.2, in September, 64.4, in October, 58.7, in November, 80.1, and in December, 98.6. It is evident that respondent's system of transportation was heavily overtaxed until the closing months of 1920. Another exhibit shows the daily average number of cars dispatched and the daily average number of cars awaiting movement from March to December, 1920. The daily average percentage of lay-over in March, 1920, was 66.8, in April, 91.9, in May, 70.0, in June, 71.9, in July, 69.3, in August, 53.9, in September, 58.6, in October, 61.4, in November, 64.9, and in December, 64.7. These two statements, considered together, indicate, according to the respondent, that for the early months of 1920 the inability of the respondent to care for cars requisitioned was due in part, at least, to lack of motive power. Re-

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spondent's chief of motive power testified that anything over 50 per cent of lay-over represents an abnormal condition. The majority report points out that the respondent has not established any direct connection between the large percentage of lay-over and the large number of locomotives undergoing or awaiting repairs. However speculative the connection may have been, it is apparent that the management was faced in March, 1920, with a condition and not theory. Traffic was increasing rapidly and was accompanied by demands for service which the respondent was, under the conditions then prevailing, unable to meet.

The number of its locomotives then undergoing and awaiting class repairs and unclassified repairs requiring 24 hours or over was large, amounting to over 18 per cent of all of its locomotives, and the estimated number of locomotives (724) due for repairs at the end of the ensuing month gave no hope for improvement in the situation. Respondent's chief of motive power testified that anything over 12 per cent of bad-order locomotives represented a bad condition, and the manager of the department of equipment for the Railroad Administration testified that 12 per cent would be too high in a period of "extreme business."

Under the circumstances it was certainly incumbent upon the management to do everything possible to bring the Pennsylvania system to the utmost of operating efficiency, and if the condition of motive power interfered or was likely to interfere in any respect with the movement of traffic offered, it was the duty of the management to rectify that condition at once.

What, then, was the capacity of the Pennsylvania shops for locomotive repairs? The actual output of such shops for classified repairs for the preceding year had averaged 480 per month, if we accept the investigators' figures, and the highest output in any one month was 542 in July, 1919. The majority report summarizes estimates of capacity, made at various times and under various conditions, some of which include shops omitted from others. A circular letter from respondent's chief of motive power to general superintendents of motive power sent March 2, 1920, specified, by company shops, the monthly output of classified repairs which it was desired to maintain as the minimum, and the aggregate of such repairs amounted to 525. The discrepancy in the number of shops included within the various reports is explained by the fact that from time to time classified repairs were made in roundhouses or other places not specially equipped or usually available for repairs of that character. It is explained, further, that the larger estimates of capacity were based upon the assumption that the output of classified repairs in any particular shop whose capacity was estimated would not be subject to interfer-

ence by heavy running repairs, but as a practical matter such interference was bound to occur. Respondent's chief of motive power testified that the total of 525 assigned to the shops by the circular letter of March 2, 1920, was based upon the desire of the management to bring pressure to bear upon its shop superintendents to increase the output and represented a total hoped for but not entirely expected. He said that the output of 525 could be expected "every time you push and you can take care of the running work." The average output for the six months immediately following the termination of federal control, when respondent admittedly was pushing its shops to capacity, was, according to respondent's figures, almost exactly 525, being 524.33.

Although the respondent's chief of motive power testified at the hearing that in his opinion the average capacity of the shops for classified repairs was 500 per month, it would seem from the evidence that the respondent would have been justified on the 1st of March, 1920, in assuming that *under favorable conditions* an average capacity of 525 classified repairs per month could be obtained during the ensuing few months and at the same time heavy running repairs be maintained. It is argued in the majority report that assuming a shop capacity of 525, the average monthly output for the year under respondent's figures was but 483, and therefore 42 below the desired minimum. It is then reasoned that by using its shops to the full capacity of 525, the respondent could have cared for the 200 locomotives sent to Baldwin's in five months, or in seven months under the investigators' figures as to output, the former figure being well within the time consumed by the Baldwin plant. This certainly is close figuring to the point of danger, but it is impossible to apply this argument to the facts shown. I have already pointed out that the average monthly output for the six months immediately following federal control was approximately 525 and it, therefore, equaled the estimated capacity. This is the only period that can be considered with any justice to the respondent, for the whole purpose of sending the locomotives in question to the outside shop was to restore them to use in time for the expected summer and fall business. The contract called for their delivery in from three to four months from the delivery of the first engine, and the last of them was in fact delivered on September 19, 1920. The question is not whether these locomotives could have been repaired in the Pennsylvania shops some time within the ensuing year, but whether they could have been repaired very early in the year. The testimony is conclusive that they could not, for without them the shops were worked to their full capacity of 525 for the six months following the making of the contract. There is nothing in the evidence to indicate that the shop capacity

of the respondent could have been increased materially beyond the output shown during the six months in question. Much less is there anything to indicate that respondent's officials had any reason to expect as of the 10th of March, 1920, that a greater output could be obtained. Indeed, we can not impute to them as of that time knowledge of capacity equal to the output actually achieved later. The capacity of 525 was then merely an estimate. At that time, according to the investigators' figures, the respondent had in its shops 711 locomotives undergoing or awaiting classified repairs (601 according to its own exhibit) and from 700 to 800 locomotives undergoing unclassified heavy repairs. According to reports from the field, 724 locomotives then at work were due for classified repairs at the end of the ensuing month. The amount of work sent out was comparatively small, its cost proving to be only 4.6 per cent of the total expenditures during the year for locomotive repairs. The effect of sending it out in March, 1920, was to relieve the pressure of work upon the Pennsylvania shops during an extremely critical period.

The only question that remains is whether the contract in question was providently made or involved unreasonable expenditures. The costs under the Baldwin contract were greatly in excess of the costs of similar work in the respondent's shops, assuming capacity in the Pennsylvania shops to make the repairs. It is apparent, however, from the foregoing discussion that such capacity did not exist at any time during the period of the contract. If made at home, it would have been necessary to postpone the making of the repairs until after the great need for locomotives had passed, and this would have resulted in a loss of income which might well have more than offset the large amount spent for repairs. There is testimony indicating average earnings per freight locomotive ranging from \$12,000 to \$17,500 monthly during the latter half of 1920.

The concurring opinions evince a point of view which helps to account for the error into which I think the majority has fallen. They urge that the fact of chief public interest "is the discrepancy between the cost of the contract work done by the Baldwin shops, and the cost of precisely similar work done in respondent's shops." The comparison "between system shop repairs at approximately \$9,000 per locomotive and contract shop repairs at approximately \$25,000 per locomotive" is made all persuasive. Only rarely, if ever, can half the story lead to just decision. In this case, as everywhere, failure to utilize the available material of important basic facts is to build conclusion without sound foundation. Obviously, the helpful comparison in this case is not between \$9,000 and \$25,000, but between \$9,000 and that figure less than \$25,000 which would remain after deducting the earnings of the locomotives which the company



The record is conclusive that the locomotives could not have been repaired in the company shops prior to September 1, because during the first six months after the making of the contract the shops were running at full capacity on other work. The company urgently needed these locomotives and could not handle the business even with them. Chief of motive power Wallis testified on page 151 of the record as follows:

Everybody knows that in the early part of the year there were difficulties in getting men, and certain conditions on many railroads; and my files show I continually hammered at people to get the output; to get the output per month.

At page 478 he testified:

Q. It is your judgment that the facilities available were used to their full capacity during that period to turn out the locomotives? A. I have so testified and they were. Yes, sir.

Q. Then, if we had not had these 200 locomotives we would have been that much more short of meeting the demands of the public. A. Yes, sir.

Mr. Wallis was not disputed, and as against his testimony earlier estimates of different officials as to what could be done, looking to the future, based upon various assumptions, can have no avail—particularly where, as in this case, it is shown that such estimates were not justified by subsequent events. Undue importance has been attached to the earlier estimates referred to. It was shown that the larger estimates of capacity included in their aggregate an estimate of capacity for repairs in various roundhouses and other places not usually available for classified repairs. Referring to the largest estimate made, Mr. Wallis said, on page 467 of the testimony:

It is my understanding of those statements that it was desired to specify what was the maximum capacity of that particular place, of the particular place that we reported. Each place was specifically referred to. It was the idea that you should report on that statement what was the maximum number of classified repairs that could be done at that place, free from interference of other things, and where there was interference from other things, a suitable deduction had to be made from the maximum figure, from the figure reported.

Q. Did you report, then, in that column what you could do at these various points if you were not doing any other repair work?

A. That is exactly what I have testified; if the repair work was not interfered with—if this classified work was not interfered with by any other thing.

Belief that the shops had a capacity in excess of 525 classified repairs per month, under the conditions prevailing, is not warranted.

During the first six months of 1920, the shops were working to full capacity and working overtime. It is impossible to get away from these facts. On page 80 Mr. Wallis testified:



We could not have made the repairs, to start with, without increasing our plant, and increasing all those accounts that go along with that proposition. \* \* \* So it was an impossibility for us to do the work. It was out of the question. Our shops, most of our shops, were double turn. Our controlling machines were up to their capacity, in three tricks in most cases.

That the shops were working overtime during the early months of 1920 is further shown by the testimony of witness Wallis, at page 504.

It has been urged in support of the majority report that the aggregate of all repairs made upon the system was less in 1920 than it was in 1919. The comparison is fallacious. We are concerned in this investigation with output of classified repairs only, and the record shows that the output of such repairs in 1920 was greater than that attained in any preceding year shown in the record. "Aggregate of repairs" is without significance. In the record aggregate of repairs has only to do with the number of repair operations and gives no indication of the amount of work done in each operation or in the aggregate. One classified repair requiring two months would be the equivalent of 60 running-repair operations, each requiring one day, assuming the same number of men to be at work. The misunderstanding of the testimony here shown, in view of the unprecedented record for classified repairs in 1920, accounts for and disposes of the expression in one of the concurring reports "that the invocation of outside assistance was not concurrently backed by appropriate efforts in respondent's own shops." The fact that there was such a large output of classified repairs furnishes explanation of the falling off in the total number of repair operations. Moreover, the traffic demands of the system were such in 1920 as to indicate that locomotives were shopped only when absolutely necessary, resulting in a falling off in the total number of repairs, i. e., repair operations.

Any theoretical or abstract objection to the contract because it was not entered into after competitive bidding, or because of any of the terms which it contained, or of the manner in which the work was to be done or paid for under it, is out of place when coming from us, because we, who made the record, have failed to show that any better terms were available. The burden of the attack was upon us, and it was incumbent upon us to show, by affirmative testimony, that this particular contract was not justified by the conditions under which it was made. We do not know whether any better terms could have been obtained and therefore can not find against what was done. This inquiry respecting the outside repairs made for the respondent is in a proceeding which involves outside repairs arranged for by other carriers. A comparison of the respondent's

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contract with the other contracts before us does not indicate in the respondent's contract exceptional characteristics justifying criticism. We may not apply abstract theory to such situations. Nor may we indulge in assumptions, implications, suppositions, and presumptions.

Whatever the *actual net cost* of these repairs to respondent may have been, if in fact the earnings of locomotives restored to service were not greater than the repair expenditure, the expenditures were justified from the point of view of the management in March, 1920, when it faced the uncertainties of the coming year. It was not time to hesitate when the public service depended on the amount of available motive power. To have taken chances with the supply of locomotives would have been to gamble at the risk of public welfare. The evidence all goes to show that the decision made had ample warrant in the facts before those who made it and was justified by subsequent events. We have not been erected into a supreme directorate of all the railways of the country, and I conceive that it would be beyond our province and unwise to criticize those who are responsible, even if in the exercise of their judgment we thought an error had been made.

LEWIS, *Commissioner*, dissenting.

I am not in accord with the majority. The cost of repairs under the Baldwin contract undoubtedly was higher than had the work been done in the Pennsylvania's shops. As it transpired, the Pennsylvania could have made the repairs later in the year. These, however, are not the controlling factors. If judgment is to be passed it must be on the question of whether, in March, 1920, the company was justified in sending the work out.

At that time the carriers were facing the return of their properties from government operation. This was a national policy adopted by Congress, approved by the Railroad Administration and by the country. There was general recognition that private operation was then put on final trial. Traffic was heavy. Complaints were general. There were repeated warnings that service must be improved. There was every reason to anticipate the still greater demands which came in the spring, summer, and early fall of 1920. Under all these conditions the company was under obligation to make every effort not only to maintain but to improve its facilities for transportation. Motive power was the vital traffic-moving element. Locomotives in repair had an earning power in excess of \$12,000 a month. More important, however, was that on an adequate supply of motive power depended both the success or failure of private operation and the high industrial and commercial activity of the country.

The decline in traffic in the latter months of 1920 could not be foreseen. This Commission in authorizing rates to yield a definite return upon the values of the carriers' properties was unable several months later and after a series of hearings of national scope, to predict the collapse of traffic then only a few weeks distant. I can not, therefore, concur in a condemnation that, in light of a specific finding that no ulterior or dishonest motives were shown, must rest on conditions which arose subsequent to sending the needed locomotives to outside shops. The contract was made without competitive bidding and on the cost-plus basis. However, it was made in a period made historic by reckless, loose contracting in all business and at a time when the cost-plus contracting system, widely employed by the government itself, had not fallen into discredit.

My objections to the adoption of such a policy are, however, more fundamental.

First: The government has decided against government management of the railroads. It has set up regulation and has definitely adopted a policy of protection. Charges for services may be levied to meet only the requirements of honest, efficient, and economical management. The record does not give warrant for condemnation on the ground of dishonesty or inefficiency. The pressing consideration in March, 1920, was service, and whatever might be said in criticism on the ground of uneconomical management disappears when there is taken into consideration the earning power of locomotives in service.

Second: The adoption of a policy of condemnation is dangerous. The prosperity of the country is dependent on exercise of broadest vision and boldest initiative by those in charge of the railroad facility. Responsibility should not be impaired by intimidation and menace of public censure except in instances of most extreme provocation. Management having been placed, as a national policy, in the hands of the railroad executives, the government should not condemn actions that appear when taken to be to the best interest of all concerned, except upon a conclusive showing of improper motives or public injury.

COMMISSIONERS HALL, DANIELS, and CAMPBELL also dissent.

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No. 12066.  
CONSTRUCTION AND REPAIR OF RAILWAY  
EQUIPMENT.

ATLANTIC COAST LINE RAILROAD COMPANY.

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*Submitted July 22, 1921. Decided March 7, 1922.*

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Contracts negotiated by the Atlantic Coast Line Railroad Company in 1920 for the repair of 30 of its locomotives by the Baldwin Locomotive Works, although based upon excessive costs, not found, in the circumstances disclosed, to have been unwarranted.

*George B. Elliott* for Atlantic Coast Line Railroad Company, respondent.

*Richard B. Gregg* for railway employees' department, American Federation of Labor, and affiliated organizations, interveners.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This report relates to locomotive equipment of the respondent, Atlantic Coast Line Railroad Company, and is pursuant to an investigation, instituted upon our own motion, to determine whether common carriers by railroad subject to the interstate commerce act have caused or are causing certain of their locomotives or other equipment to be constructed or repaired at construction or repair shops other than their own, and have purchased or are purchasing from or through such shops material and supplies used in such construction or repair, at costs in excess of those for similar work in their own shops, including material and supplies therefor, in disregard of efficient and economical management, resulting in unreasonable expenditures, or otherwise contrary to law.

Agreeably with our order of investigation and prior to the hearing in the particular matter, one of our locomotive inspectors and one of our examiners of accounts, hereinafter called the investigators, made a detailed examination of respondent's shop records and of pertinent records of the United States Railroad Administration and of this Commission. The case is submitted upon the data introduced in evidence by them and by respondent, supplemented by some additional evidence by a representative of the Railroad Administration and by further data prepared by respondent at the

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request of the interveners and introduced on behalf of the latter. Class and running repairs, hereinafter referred to, are described in the margin of our report concerning locomotives in the *Pennsylvania Railroad Company Case*, 66 I. C. C., 694, at page 696. The term respondent is also used to refer to the system lines during federal control.

About the middle of 1919, in anticipation of a heavy citrus-fruit movement and a heavy tourist travel in the following winter months, respondent's present executive vice president, then federal manager of the system, took up with the regional director the question of having 30 locomotives, needing class-2 repairs or heavier, repaired in outside shops. Nothing was accomplished at that time, and in August a shopmen's strike, which suspended repair work for about 18 days, aggravated the motive-power situation. It appears that most of the preliminary negotiations were conducted orally, but four telegrams on the subject were introduced in evidence. After some delay, and on November 25, the federal manager wired the regional director that the system had over 100 locomotives awaiting shop, which, because of scarcity of mechanics and for other reasons, could not be put in serviceable condition to meet the approaching winter's demands, and asked if the assistance of other shops could be had. On the following day the regional director replied that he was uncertain of the attitude of other railroads at the time, it having then been supposed that federal control would end with the calendar year, and recommended communication with the American Locomotive Company or Baldwin Locomotive Works to ascertain if relief could be had from one or both. Later, the matter was taken up with the Railroad Administration at Washington. By wire of January 8, 1920, the regional director asked the Administration if arrangements could be made for the repair of 50 of respondent's Pacific-type locomotives in other railroad shops, preferably Norfolk & Western. The Administration replied that there was no available space in railroad shops, but mentioned as available for prompt handling the Richmond, Va., shops of the American Locomotive Company, and suggested that the respondent corporation, as the Director General's successor, effect a contract with that company with a view to prompt action.

It appearing, upon opening negotiations with the Baldwin and American plants, that neither then desired to take 30 locomotives at once, surveys of the engines were made and successive bids were secured for the repair work in three lots of 10 locomotives each. The Baldwin bid of \$230,000 having been the lower, a contract with that concern at that figure for the first 10 was signed January 10, 1920. A second contract of like tenor was made April 17, 1920. Because

the Baldwin bid of \$267,000 for the third lot was deemed too high, a contract was entered into with that plant on a cost-plus basis, maximum \$230,000, November 29, 1920.

Respondent's business, which seasonally is at its peak from December to May, had been steadily growing and bad-order locomotives had accumulated. In November, 1916, respondent had ordered 20 new superheater Pacific-type locomotives, which were delivered late in 1917 and in 1918, but 8 of which were diverted to other lines. In 1918 the Railroad Administration allotted to respondent's system 54 locomotives from other lines, mostly secondhand, but including 15 Russian decapods. Prior to the war respondent's policy had been to shop its locomotives after having run 75,000 miles, but this was impossible during the war, and on July 1, 1919, there were on hand 138 locomotives that had made over 100,000 miles each. On the same date 75 were undergoing class repairs, 64 were awaiting such repairs, and 65 had been set aside for disposition. Because of the demands upon the motive power, locomotives had been worked in "chain gang" arrangement—first in, first out—making it impossible to keep up repair work in the company's shops. During federal control some of respondent's locomotives were repaired in Norfolk & Western and Southern railway shops.

The 30 locomotives required heavy class repairs, not less than class 2, including new fire boxes and in many cases heavy repairs to boilers and the addition of superheaters. Respondent's principal shops are at Waycross, Ga., and Rocky Mount, N. C., and the Waycross shop was the only one that could build fire boxes. The records of respondent's application of new fire boxes disclose 1 in 1914, 3 in 1915, 1 in 1916, 7 in 1917, 1 in 1918, and 16 in 1919; and meantime fire boxes had been welded and patched until that makeshift could be continued no longer and new fire boxes were necessary. In 1920 respondent applied 23 fire boxes, and during the year the Baldwin plant applied 20 out of the 30 under the contracts. A shortage of shopmen contributed to respondent's handicap, and men refused to go to Waycross because housing conditions there were unusually bad and dwellings could not be obtained at reasonable rentals.

Respondent's general superintendent of motive power introduced in evidence certain graphic charts to illustrate the power situation. One indicates that the number of locomotives out of service for class and running repairs requiring 24 hours or over increased from 99 in February, 1918, the low point, to 202 in February, 1920; reached a peak figure of 255 in September, and had been reduced to 203 by February, 1921. Another indicates that of the total on line they represented nearly 24 per cent in June, 1919, with a de-

cline in the latter part of the year to approximately 21 per cent, a gradual increase to 27.5 per cent in September, 1920, and a decline to 23.5 per cent in December, 1920. The foregoing figures are subject to modification, however, as they include a total of 68 locomotives having cylinders less than 18 inches in diameter, which had been set aside, for disposition, from time to time during a period from May, 1914, to August, 1920. Of the total number, 67 had been set aside when federal control ended. Eliminating them from consideration, the number proper to count as out of service would be reduced from 202 to 135, and the corresponding percentage of the remaining total on line would be reduced from 23 to 16.6.

It appears that in the latter part of November, 1920, a few days prior to the date of the third contract, respondent made some reductions in its shop forces, principally of helpers, apprentices, and laborers, but including a few boilermakers and blacksmiths. At the same time the force of machinists appears to have been slightly increased. As far as the record goes, respondent's capacity to do fire-box work was not appreciably affected.

While the investigators' figures indicate no very material changes in 1919 and 1920 in the numbers of locomotives that received class repairs, the numbers in and awaiting shop for all repairs, the numbers of serviceable locomotives, and average shop forces, and practically confirm respondent's estimate of 50 class repairs per month as its maximum output, they indicate a generally increased output of heavy running repairs in the course of those years. They also indicate that of the number of locomotives out of service at the end of federal control a high percentage required class repairs, and this was generally true throughout 1919 and 1920.

In the circumstances disclosed by the record much of the detailed evidence may be disregarded. The evidence concerning respondent's handicap in the matter of fire-box work is not disputed, and otherwise the shops and roundhouses appear to have had constantly more than their capacity quota of average class and running repair work during the period in question. Some new locomotives were added during the year, but the added tractive power did not offset the bad-order power.

It appears of record that in April, 1919, the superintendent of the Waycross shop suggested that the boilers of the locomotives then needing new fire boxes be removed from the running gear and stripped and sent to the American or Baldwin plant for application of fire boxes and flues, the balance of the repair work to be done in respondent's shops. The suggestion seems not to have been favorably considered, and, while the greater portion of the cost of the contract work is represented by the repair of the machinery of the

locomotives, the record is devoid of evidence which would indicate the feasibility or economy of such a division of the work during the period in question.

While the record indicates that the contract costs were excessive, nevertheless they appear to have been the lowest offered to respondent; and, considering the character of the necessary work to be done, the limitation of the contracts to locomotives requiring that class of repairs, and respondent's shop situation which necessitated the contracts for seasonable relief, the record does not afford grounds for condemnation of the action taken.

HALL, *Commissioner*, dissenting:

"Honest, efficient and economical management" was the due of every corporation, railroad or other, before those words were written into the interstate commerce act. The duty rests upon officers and directors of railroads, but not by virtue of that act. Failure in that duty violates no provision of the act which we administer, and we hold no roving commission as public monitor or critic. In the plenitude of our powers it should not be forgotten that they do not include those of general manager. We have gone beyond our province in this investigation and, whatever our findings, can enter no valid order. The results of our comparative and other studies could doubtless be made helpful, in a less obtrusive way, to those who bear responsibility for railroad operation, and constructive suggestions would doubtless be welcomed for what they are worth. With such a course I would be and am in full accord. But I dissent from all reports in this investigation. It should be discontinued.

POTTER, *Commissioner*, dissenting in part:

I dissent from the finding of the report that the contract costs of the work in question were excessive. If, as we have found, they were the lowest offered to the respondent, and the record does not afford grounds for condemnation, we should find that the costs were not in fact excessive but were proper. If we are to make any finding at all in this case, the carrier is entitled to an affirmative finding that the contracts had due regard for efficient and economical management and resulted in no avoidable or unreasonable expenditure.

For reasons fully set forth in my dissent in the *Pennsylvania Railroad Company Case*, 66 I. C. C., 694, I think in this matter we are acting outside of our proper field and that the proceeding should be discontinued.



No. 12066.

CONSTRUCTION AND REPAIR OF RAILWAY  
EQUIPMENT.

NEW YORK CENTRAL RAILROAD COMPANY.

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*Submitted July 8, 1921. Decided March 7, 1922.*

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Under contracts negotiated in the early months and in the summer of 1920 with certain locomotive construction companies, 195 locomotives of the New York Central Railroad Company were sent to the contract shops for classified repairs. Upon investigation, it appears—

1. That the cost to respondent was in the neighborhood of \$3,000,000 in excess of the cost of similar work in its own shops;
2. That respondent could have repaired at least the greater number of the locomotives in its own shops within the time in which the contract work was done.

*Clyde Brown* for New York Central Railroad Company, respondent.

*Richard B. Gregg* for railway employees' department, American Federation of Labor, and affiliated organizations, interveners.

REPORT OF THE COMMISSION.

BY THE COMMISSION:

This report relates to locomotive equipment of the respondent New York Central Railroad Company, lines east and west of Buffalo, N. Y., and is in pursuance of an investigation, instituted upon our own motion, to determine whether common carriers by railroad subject to the interstate commerce act have caused or are causing certain of their locomotives or other equipment to be constructed or repaired at construction or repair shops other than their own, and have purchased or are purchasing from or through such shops material and supplies used in such construction or repair, at costs in excess of those for similar construction or repairs in their own shops, including material and supplies therefor, in disregard of efficient and economical management, resulting in unreasonable expenditures, or otherwise contrary to law. The term respondent also refers to the lines during federal control.

Preceding the hearing in this particular matter, and in accordance with our order which instituted the general investigation, one of our locomotive inspectors and one of our examiners of accounts, hereinafter called the investigators, made an examination of respondent's

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records, together with pertinent records of the United States Railroad Administration and of this Commission, and the data gathered therefrom were introduced in evidence. Certain additional evidence was submitted by representatives of the Railroad Administration and by the interveners. The principal evidence for respondent was submitted by its chief engineer of motive power and rolling stock.

Respondent builds no locomotives, but maintains shops at various points on its lines for the repair of its motive power. In addition to such repairs as were made in those shops during 1920, respondent contracted in that year for the repair of a number of its locomotives by the American Locomotive Company, having shops at Schenectady and Dunkirk, N. Y., the Lima Locomotive Works, Lima, Ohio, the Rome Manufacturing Company, Rome, N. Y., and the Baldwin Locomotive Works, Philadelphia, Pa. Most, if not all, of the locomotives sent to the contract shops had been built by the American Locomotive Company. Unless otherwise indicated, the references herein are to the class repairs which, together with running repairs, are described in the margin of our report concerning locomotives in the *Pennsylvania Railroad Company Case*, 66 I. C. C., 694, at page 696.

The contracts were not uniform. In all cases test locomotives were first sent to the contract shops for inspection, jointly by representatives of respondent and of the shops, as bases for bids for the required repairs, and contracts at flat prices thereafter were closed with all except the Baldwin plant. The Baldwin contract was made on a cost-plus basis, that is, the cost of materials used, at stipulated prices, and of direct labor, plus 120 per cent of distributed labor to cover all overhead expenses, plus 15 per cent of the whole for profit; respondent having deemed that basis more favorable than the flat prices quoted. The Rome contract provided for the repair of 50 locomotives, with the option on respondent's part, after 40 had been repaired, of extending the contract to cover an additional 50. The contracts with the Lima and American shops were not for specified numbers. The Baldwin contract provided for the repair of 100 locomotives. In all, 112 locomotives were repaired and returned under the contracts in 1920.

According to respondent's principal witness, the contracts were the result of a depreciated condition of motive power toward the end of federal control. This condition first developed on the lines west of Buffalo, and the American and Lima contracts, negotiated in January, and the Rome contract, entered into in March, had in contemplation motive power of the lines west only. It was not until the latter part of June that the power situation on the lines east reached a stage which necessitated the repair of locomotives from

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that region in contract shops. The preceding two winters had been the severest in respondent's experience; a congested car situation developed in the Toledo, Ohio, territory in January, which effectually blockaded the Toledo terminal and necessitated embargoes against traffic movements through it; and respondent was asked to furnish locomotives to assist the Pere Marquette Railroad in relieving the blockade, some of which were supplied by the lines west, and to compensate which region locomotives were transferred thereto from the lines east. The general power condition then being extremely bad and the weather severe, with a prospective heavy traffic, the witness was asked by the federal manager of respondent's lines, now vice president in charge of company operations, to get into touch with the Rome plant to obtain relief from that source. The witness did so and also opened negotiations with the American and Lima shops for the same purpose. Contract arrangements with those concerns having been made in January and March, as stated, and the prosecution of repair work in respondent's and the contract shops failing to keep the motive power abreast of the traffic demands, negotiations with the Baldwin plant were begun in June and completed in August, although the formal contract was not signed until October 1. Almost all of the repair work under the several contracts was performed after federal control ended.

A prefatory explanation is necessary to an understanding of the mileage theory upon which respondent has contrasted motive-power conditions, shop performances, and results as between the periods preceding, during, and following federal control in justification of the contracts. Each new locomotive of the several classes is assigned a certain potential mileage, based on experience, which it is assumed to be able to perform between shoppings for class repairs; a "new" locomotive being either one fresh from the builder or one which has received such repairs as to restore its capacity to perform a full term of service in the district and class of service in which it is used. To this assigned mileage respondent attaches significance only in connection with additions and retirements and in estimating the total amount of power available at any given time. Maintenance, on the other hand, is measured in terms of miles run out in service and miles restored in the shops. For example, a locomotive having an assignment of 50,000 potential miles may be run 40,000 miles and then given full-service repairs, in which case the shop is credited with 40,000 miles restored. The aggregate of such mileage service restored with respect to all locomotives during a given period represents shop mileage output and measures the capacity of the shops to restore power to meet service-mileage demands. If, however, at

the end of a particular period of service a locomotive is retired as obsolete, without being shopped, its assigned mileage is deducted from the total power reserve. In other words, the ratio of the service mileage to the assigned potential mileage is taken to represent the general condition and to indicate the further serviceability of each locomotive, while shop production is measured by restored service mileages; and the differences between miles run out in service and miles restored, in connection with power reserves so determined, inclusive of additions and retirements, are submitted as representing comparative motive-power conditions and prospects in the several periods. Respondent submits nothing by which to gauge its shop capacity in the sense of maximum possible output of class repairs and considers such an ascertainment impracticable.

To illustrate the requirements in respect of locomotive service as dependent upon and proportionate to the volume of traffic, respondent compares the operations in the respective periods, as indicated by the total car-miles, freight and passenger, loaded and empty, with the corresponding locomotive-miles, as follows:

Period.	Total car-miles.	Total locomotive-miles.
For three years preceding federal control.....	4,919,889,578	273,466,794
Annual average of the three years.....	1,639,963,192	91,155,598
For 1918, heaviest year of federal control.....	1,611,247,467	90,531,691
For 26 months of federal control.....	3,287,787,763	186,985,617
Annual average of the 26 months.....	1,517,426,655	86,301,064
For last 14 months of federal control.....	1,676,410,285	96,453,926
Annual average of the 14 months.....	1,486,923,101	82,674,792
For 10 months following federal control.....	1,348,435,146	76,427,110
Annual average (based on 10 months).....	1,612,122,175	91,712,532

Respondent points out that the average annual operation, measured in car-miles, during the last 14 months of federal control, represented a decrease of 12.3 per cent in comparison with the prefederal three-year period, while the corresponding decrease in locomotive-miles was but 9.3 per cent. On the other hand, the computed or assumed annual averages of both car-miles and locomotive-miles based on the 10 months following federal control were 6.2 per cent in excess of the annual averages for the full period of federal control.

The average locomotive ownership in the respective periods was as follows:

For three years preceding federal control.....	3,181
For 26 months of federal control.....	3,372
For 10 months following federal control.....	3,898

The average ownership during federal control was an increase of 7.69 per cent over the annual average for the preceding period, and the average for the third period was an increase of 0.77 per cent over the average during federal control.

The average tractive power per locomotive for those periods, in pounds, was—

For three years preceding federal control.....	34, 839
For 26 months of federal control.....	36, 882
For 10 months following federal control.....	37, 363

The average tractive power per locomotive during federal control increased 5.8 per cent over the average for the preceding period, and during the last period increased 1.3 per cent over the period of federal control.

The average aggregate tractive power, in pounds, for the three periods was—

For three years preceding federal control.....	109, 079, 653
For 26 months of federal control.....	124, 371, 466
For 10 months following federal control.....	126, 983, 669

The corresponding successive increases were 14 per cent during federal control and 2.1 per cent in the last period over the preceding period's average.

During the indicated three-year period respondent contracted for the construction of 480 new locomotives and for 165 conversions, making a total of 645 modern engines provided for, or an annual average of 215. During the same period 388 locomotives were retired, an annual average of 129, leaving a net annual gain of 86. During 1918 and 1919 the Railroad Administration contracted for the construction of 120 new locomotives, an annual average of 60, and retired a total of 62, an annual average of 31, with a net annual gain of 29, as compared with 86 during the preceding period. In this connection respondent observes that failure to retire inadequate or obsolete types annually results in a deterioration of the motive power generally. While respondent's annual obsolescence, figured at 4 per cent of the total ownership during the three years preceding federal control, is shown as 132 locomotives, respondent retired an annual average of 129 during that period, retaining an annual average of 3 obsolete locomotives. Reckoned for the full period of federal control, the annual average retirement was 29, with an annual average retention of 103 obsolete locomotives measured by respondent's program. At the same time the Railroad Administration provided for 60 new locomotives annually, as against respondent's provision for an average of 215 during the preceding three years.

As indicative of the serviceability of the locomotives owned and their ability to perform mileage, the average miles run per month per locomotive in service are shown to have been—

For three years preceding federal control.....	2, 827
For 26 months of federal control.....	2, 508
For last 14 months of federal control.....	2, 497
For 10 months following federal control.....	2, 560

The average monthly service mileage decreased 11.2 per cent during federal control as a whole as compared with the preceding period, and the corresponding decrease for the last 14 months of federal control was 11.6 per cent. During the ensuing 10-month period there was an increase of 2.1 per cent over the full period, and of 2.5 per cent over the last 14 months, of federal control.

The ratios of total car-miles to total locomotive-miles, that is, the car-miles produced per locomotive-mile run, were—

For three years preceding federal control.....	17. 9
For 26 months of federal control.....	17. 6
For last 14 months of federal control.....	17. 4
For 10 months following federal control.....	17. 5

If the ratio for the antecedent three-year period had been maintained throughout federal control the volume of traffic handled in the latter period would have resulted in a total of 183,673,617 locomotive-miles instead of the 186,985,617 miles actually run, a reduction of 3,312,000 miles, or 1.77 per cent. Further, if the monthly mileage per serviceable locomotive throughout federal control had equaled that of the preceding three years the average number of locomotives in service would have been 2,540 instead of 2,867, a decrease of 11.4 per cent. Stating the latter proposition differently, had the average number of locomotives in service during federal control, namely, 2,867, accomplished the same mileage each as was accomplished per unit during the preceding three years the result would have been 210,730,234 locomotive-miles; and the latter, on the basis of the ratio for the three-year period, would have produced 3,708,852,118 car-miles, as against the 3,287,757,752 car-miles produced during federal control, an increase of 421,094,366 car-miles, or 12.8 per cent. The stated conclusion is that the effect of the requirement of more locomotive-miles to handle a given volume of traffic was to increase the miles run out and decrease the available power reserve, thus magnifying the burden placed on the shops and roundhouses.

The mileage output of respondent's shops, including roundhouses which made class repairs, was—

	Total.	Annual average.
For three years preceding federal control.....	271,507,016	90,502,338
For 26 months of federal control.....	192,136,689	88,678,471
For last 14 months of federal control.....	92,694,279	79,452,239
For 10 months following federal control.....	72,137,681	86,565,193

As compared with the annual average of the preceding three years, the average shop output during federal control decreased 2.01 per cent, and the corresponding decrease in the last 14 months of such control was 12.2 per cent. The average output during the ensuing 10-month period decreased 2.4 per cent as compared with the full period of federal control, but increased 8.9 per cent as compared with the last 14 months of that period.

The man-hours worked in the shops, exclusive of roundhouses, were 11,455,456 in 1918, 10,365,322 in 1919, and 12,105,567 in 1920; and respondent observes that with an increase of 5.6 per cent in man-hours, 1920 over 1918, the production of shop-miles fell off 12.6 per cent. The increase in man-hours per 1,000 shop-miles is thus tabulated:

First six months, 1918.....	113.4
Last six months, 1918.....	131.4
First six months, 1919.....	134.8
Last six months, 1919.....	134
First six months, 1920.....	144.5
Last six months, 1920.....	149.7

The man-hours per unit of output for the last half of 1920 were 36.3 in excess of those for the first half of 1918, an increase of 32 per cent. Respondent points out that if the 1919 performance had kept pace with the first half of 1918 its shops would have produced 91,404,950 miles instead of the 77,093,898 miles in fact restored, an increase of 18.5 per cent; and on the same basis the 1920 output would have been 106,751,030 shop-miles in lieu of the actual production of 82,304,916, an increase of 29.7 per cent. In this connection it is further computed that, as against 3,631,443 miles restored to the 112 locomotives in contract shops in 1920, the indicated additional mileages that might have been produced in respondent's shops in 1919 and 1920, on the basis of the average miles between shoppings in those years, would have been equivalent to 553 locomotives in 1919 and 945 in 1920, a total of 1,498.

Other figures comparing pay-roll totals and shop-miles produced in the several periods, without segregation of straight time and punitive overtime, need not be set out. In 1918 up to the close of

hostilities in the world war and during a considerable portion of 1920 overtime was worked, and sporadic strikes and walkouts occurred in 1919 and 1920. Persistent efforts were made in the latter two years to obtain needed additional shopmen, with indifferent success.

As previously explained, according to respondent's theory the motive-power situation depends largely upon the relation of shop-miles output to miles run out in service and also is affected by potential mileages lost through retirement or sale of locomotives and gained through purchases of new ones. It is contended that, in order properly to maintain power, the shop-miles output should substantially keep pace with the miles run out in service and new locomotives should be added to offset potential mileages retired and to equalize depreciation. The relations of shop-miles and service-miles for the several periods are shown as follows:

Period.	Service-miles.	Shop-miles.	Loss.
For three years preceding federal control.....	278,828,438	273,620,599	5,207,839
For 26 months off federal control.....	190,439,940	189,933,477	506,463
For 10 months following federal control.....	77,321,185	74,539,396	2,781,789

According to the foregoing figures, from 1915 to 1920, inclusive, a total of 8,496,091 miles were lost—that is, not restored to the locomotives in service.

The miles gained and lost by acquisitions and retirements are shown in the subjoined table, in which locomotives to have been constructed or converted for respondent prior to federal control but delivered subsequently are included in the prefederal period:

Period.	Miles lost, account of retire- ments.	Miles gained, account of new equip- ment deliv- ered or con- tracted for.	Miles gained, account of conver- sions.	Net gain or loss.
Three years preceding federal control.....	21,498,000	32,620,000	3,997,000	15,119,000 gain.
Years 1918 and 1919.....	3,258,000	8,525,000	.....	5,267,000 gain.
Year 1920.....	3,523,000	2,906,000	.....	537,000 loss.

Collating the foregoing two tables, respondent notes, as between the shop-miles deficit and the gain through new equipment during the antecedent three-year period, a net gain of 9,911,161 miles, or an annual average of 3,303,720; during federal control, a net gain of 4,760,537, or an annual average of 2,197,171; and during the ensuing 10 months, a net loss of 3,308,789, or a computed annual average of 3,970,547.



Adverting to the retention in service during federal control of obsolete locomotives which would have been retired under respondent's program, and translating that program into an annual mileage of 7,166,000 during the preceding three-year period, amounting to 14,332,000 miles for two years, respondent deducts from the latter figure the 3,258,000 miles retired in 1918 and 1919 and concludes that the remainder, 11,074,000, should also have been retired and therefore should be subtracted from the indicated net gain in miles during federal control. This would convert that indicated net gain of 4,760,537 miles into a net loss of 6,318,463, which is ranged against the net gain of 9,911,161 miles during the prefederal period, and by the process of addition respondent determines a total depreciation during federal control of 16,224,624 potential miles as compared with the situation had its program been followed. Respondent also notes that there was a further loss of 3,308,789 miles during the 10 months following federal control, resulting in a total depreciation in potential locomotive-miles of 19,533,413 on December 31, 1920, as compared with January 1, 1918, or approximately 21 per cent of the total service-miles run in 1920 and 19.8 per cent of the total service-miles in the heaviest of the preceding six years, 1916.

The general power situation is illustrated in another way. In January, 1918, the total number of locomotives on line was 3,095, which increased to a maximum of 3,386 in May, 1919, and decreased to 3,328 on February 28, 1920, the latter figure being 7.5 per cent higher than the first named. The number of serviceable locomotives on January 26, 1918, was 2,627, which gradually increased to 2,927 on December 21, 1918, the peak shown, then declined slightly to 2,902 by the end of August, 1919, and dropped to 2,654 by February 28, 1920. Thus, in January, 1918, the serviceable locomotives represented 85 per cent of the total on line, and had fallen to 79.9 per cent at the end of federal control, a decrease of approximately 6 per cent in the ratios. On January 26, 1918, 394 locomotives were out of service for repairs requiring 24 hours or over, representing 12.7 per cent of the total on line, while on February 28, 1920, the number had increased to 674, or 20.2 per cent of the total on line, an increase of approximately 59 per cent in the ratios. Of these, on the first-named date 219 were in shop for such repairs, representing 7 per cent of the total on line, which number had increased to 414 on the last-named date, being 12.4 per cent of the total equipment, an increase of 77 per cent in the ratios. The number of locomotives due on January 26, 1918, for shop within 30 days was 280, or 9 per cent of the total locomotives on line. With some fluctuations in the meantime, the number increased to 335 on February 28, 1920, which was 10 per

cent of the total on line. As reported for January 26, 1918, 247 locomotives, or 7.9 per cent of the total on line, were turned out of shop after receiving repairs, while for February 28, 1920, 330 were reported, having been 9.9 per cent of the total equipment. The output so shown was that of shops and roundhouses, and the figures appear to embrace both class and heavy running repairs.

The contention that failure to restore monthly the miles run out in service and the resulting necessity of keeping in service locomotives that should be shopped, together with failure to retire inefficient or obsolete types, inevitably brings about a low locomotive performance is illustrated by the miles run per engine failure. The three years which preceded federal control averaged 20,354 miles annually; the 26 months of federal control declined to an annual average of 10,968, a decrease of 46.1 per cent, and the ensuing 10 months averaged 6,208 miles. January and February, 1920, dropped to respective averages of 4,418 and 4,752 miles per failure, partly on account of locomotive conditions and partly because of adverse weather conditions. Engine failures are defined as arrival delays of 5 minutes or over in the case of passenger trains and 20 minutes or over in the case of freight trains caused by locomotive defects, but to which man failures, such as poor firing, may partially or solely contribute.

Along the same line it is shown that the average daily number of trains awaiting motive power in January, 1920, was 113 as against 32 in the same month of 1919, and in February, 1920, was 111 as against 25 in the corresponding period of 1919. The average daily number of cars held outside of terminals in January, 1920, was 3,041 as against 3,133 in January, 1919, and was 3,942 in February, 1920, as against 3,980 in February, 1919. The number in 1920 increased to 8,471 in April, partly because of the "outlaw strike" of switchmen in that month.

While a decline in business and revenues in the latter part of 1920 is cited as the occasion for withholding a number of the locomotives in question from the contract shops and for reductions in company shop forces, respondent disclaims any justification of the contracts on the ground of current shortage of funds necessary to meet its shop pay roll. In that connection its vice president in charge of company operations testifies that the primary desire is to open the company shops and that no further contracts are to be made until those shops are working to capacity and outside help is then found necessary.

As already stated, respondent does not deem practicable an ascertainment of the capacity of its shops measured numerically in class repairs; this because of the variations between the classes themselves and between particular classes as applied to locomotives of different

types. However, for the month of June, 1918, five shops on the lines east turned out 165 class repairs, and, based upon the average output of eight shops and roundhouses on the lines west for six months ended with the same month, a monthly capacity of 91 repairs is stated, the total being 256. Taking every third month, beginning with December, 1918, and ending with December, 1920, monthly outputs of class repairs ranging from 162 to 196 are reported as made, the indicated roundhouses having contributed none in many instances.

The data gathered by the investigators are along other lines than those followed in the main by respondent. While 112 locomotives were repaired in the contract shops and returned in 1920, a total of 192 was sent to those shops in that year, divided—9 to Lima, 45 to Rome, 62 to American, and 76 to Baldwin. Of these, 54 to Baldwin and 23 to American were sent after the middle of September. In January, 1921, 3 more were sent to Baldwin, increasing the grand total to 195 and the Baldwin total to 79, or 21 short of the number provided for in the contract with that plant. In the same month 5 more were turned out by Rome, 7 by American, and 14 by Baldwin, or 26 in all, leaving still in shop on February 1, 1921, 16 at Rome, 16 at American, and 25 at Baldwin. Of those respectively contracted for, 21 were withheld from Baldwin and 5 from Rome because of a shortage of funds.

The number of stored serviceable locomotives, reported as of the last Saturday of each month, for the first three months of 1920, during which time the first three contracts were made, and for September, October, and November of the same year, during which period respondent's shop forces were reduced, are thus contrasted with the same months of preceding years, corrected by respondent's check:

	1918	1919	1920		1918	1919	1920
January.....	39	290	98	September.....	158	454	28
February.....	42	441	45	October.....	97	374	21
March.....	24	594	47	November.....	80	457	17

The peak was reached in April, 1919, namely, 665, but from the following month to the end of 1920 there was a general sharp decline, December of the latter year showing only 45 in reserve. Beginning with the 1916 records, the earliest shown, the figures for 1919 were abnormally high, however, attributed by respondent solely to traffic conditions, and during that year the locomotive mileage was considerably lower than for the other years. In September, 1920, 89 new locomotives were contracted for, 50 of which were delivered during that year.

The number of locomotives estimated at monthly intervals to have been good for one month's further service before class repairs would be required averaged a little greater in 1919 than in 1920. Of those so shown, respectively, 47 per cent, or a monthly average of 183, were taken out of service for such repairs in 1919, and 54 per cent, or a monthly average of 201, were taken out in 1920. The average numbers so taken out were, respectively, 27 per cent in 1919 and 21 per cent in 1920 less than the output of 256 class repairs in 1918, before mentioned, and respondent's principal witness could not say whether or not they were in excess of its shop capacity.

The number of locomotives in and awaiting shop, by months, in 1920 for all repairs requiring 24 hours or over averaged 28 per cent greater than in 1919, the monthly averages having been 527 in 1919 and 678 in 1920. The 1919 figures ranged from 475 to 592, as against 608 to 725 in 1920, the peak in the latter year having been reached in November, at which time reductions in company shop forces had been made. The percentage of the increase was principally due to unclassified repairs, however, the 1919 and 1920 separated monthly averages having been respectively 183 and 209 class repairs and respectively 192 and 282 unclassified repairs requiring 24 hours or over.

A comparative tabulation of respondent's average shop forces of the crafts named for the three indicated years follows:

	1918	1919	1920		1918	1919	1920
Blacksmiths.....	158	181	182	Machinists.....	1,785	2,122	2,428
Boilermakers.....	688	810	926	Helpers.....	2,555	2,422	2,542
Laborers.....	1,385	1,809	2,158				

During 1920 and 1921, while the contract repairs were under way, the following reductions in shop forces were made, shown of record by crafts but stated here in totals:

Lines east: October 11, 241; November 16, 235; December 10, 84; February 20, 2,317; March 12, 2,284.

Lines west: October 9, 170; November 16, 165; February 19, 1,724; March 12, 1,586.

It appears that the first reduction was considered about September 13. At the time of the hearing the shops were closed.

According to respondent's records, about the middle of February, 1920, the shop time was increased from eight hours to nine hours per day, and was restored to eight hours on September 20, 1920, on the lines east and on October 1, 1920, on the lines west. A cited effect of the reduction in hours is that, as against an output of 228 class repairs

in August of that year, the production declined to 191 in September, 173 in October, and 174 in November; and respondent's superintendent of motive power of lines west reported that the reduction was equivalent to 177 shopmen in four named shops, the aggregate for all company shops not appearing.

At no time during 1919 or 1920 did respondent's output of class repairs equal in number the 256 reported in 1918, the monthly averages having been 183 in 1919 and 186 in 1920. During the period from March to September, 1920, when the shops were on a nine-hour schedule, the monthly average output of class repairs was 201. During October, November, and December, when the shops had gone back to eight hours and reductions in forces had to be made, the average monthly output dropped to 176. There was in 1920 an increase of 17.4 per cent in respondent's monthly output of all repairs requiring 24 hours or over, with extreme ranges from 1,067 to 1,393 in that year and from 978 to 1,187 in 1919.

During federal control 95 new mikado-type (heavy freight) locomotives and 34 new eight-wheel switching locomotives were allotted by the Railroad Administration to respondent's system, all of which, with the exception of 11 mikados, were on the line when federal control ended. Some extensions of the system's shop facilities also were made.

From the returns on 108 of the locomotives sent to the contract shops the repair costs were found to range in averages of \$20,189.21 at the American shops, \$25,277.58 at the Baldwin, \$17,072.58 at Lima, and \$20,631.38 at Rome, with a general average of \$21,912.33, including freight charges on the locomotives, such materials as respondent furnished, and respondent's inspection. For the most part the locomotives were of heavy freight types, and of the total number 28 received class-2, 70 received class-3, and 10 received class-4 repairs. The corresponding cost of similar repairs on 329 locomotives in respondent's shops is computed to have averaged \$5,927.45, or \$15,984.88 less than the general average contract cost. The computation takes into account respondent's direct items of cost, including shop and store expense, but exclusive of all other expense, the latter on the ground that respondent's overhead, with practically negligible exceptions, was not abated by sending locomotives to contract shops and should not be considered in determining the excess cost of the contract work. An allowance for overhead including items other than fixed charges and computed to equal a ratio of 81.85 per cent of direct labor would reduce the excess cost to an average of \$13,788.45 per locomotive. For the 195 locomotives the total would be \$3,169,322.45 or \$2,688,747.75, according to the average excess figure employed.

As stated by respondent's principal witness on cross-examination, the average cost on 24 locomotives at the Dunkirk plant of the American Locomotive Company was \$20,436.68; at the Schenectady plant of that company the average on 15 locomotives was \$19,823.91; at Rome the average on 24 locomotives was \$20,561.16; and at Baldwin the average on 40 locomotives was \$25,383.65. Settlement with the Baldwin plant had not been completed at the time of the hearing, however, and the final figure had not been determined.

During the period from March 13, 1920, to February 16, 1921, but principally during the included period of shop-force reductions, respondent repaired in its shops 10 locomotives for the Indiana Harbor Belt Railroad, 20 for the Cleveland, Cincinnati, Chicago & St. Louis Railroad, otherwise known as Big Four, 2 for the unaffiliated Cambria & Indiana Railroad, and 3 for the Lake Erie & Western Railroad. The shop of the latter at Lima burned during federal control, and generally that carrier has used Big Four facilities for three or four years past. The testimony of respondent's principal witness at one point is to the effect that the three subsidiaries were asking for help, and that it was arranged to send 100 of respondent's locomotives to the Baldwin plant and take over the repairs for the subsidiaries in preference to sending the latter to contract shops. It also appears that this arrangement was made in August, although according to the witness' earlier testimony the negotiations with the Baldwin plant were opened in June and concluded in August, but as early as April respondent was canvassing the situation with a view to securing help for the Indiana Harbor Belt and Lake Erie & Western. Of the 10 Indiana Harbor Belt locomotives, 7 had been leased to that line by respondent, with an obligation on the latter's part to keep them in repair. On the other hand, in 1920 the Big Four repaired a total of 23 foreign locomotives, including 4 for respondent, 8 for the Lake Erie & Western, and others for other lines and industrial concerns. These interchanges, because of the higher cost to respondent for work in the contract shops, were the subject of a protest from the superintendent of motive power of lines west.

By way of comparison, it is shown that respondent's charges against the Big Four for class-3 and class-4 repairs on six of the latter's H-5 locomotives ranged from \$6,235.82 to \$10,215.57, as against Baldwin's lowest and highest tentative charges of \$20,038.82 and \$22,692.24 for class-4 repairs on respondent's locomotives of the same class. The bills against the Big Four were rendered, pursuant to instructions from the president's office, on the basis of applied labor, plus 120 per cent to cover overhead, and materials at current market prices, plus 15 per cent to cover freight and store-

house charges, plus 15 per cent of the whole for the use of plant and management. Respondent allowed credit for material released, however, whereas the Baldwin contract did not.

In the matter of shop output respondent took account of the foreign-line locomotives, but did not consider them in connection with the question of its own power condition.

At the request of the interveners, respondent's net ton-miles for the years 1915 to 1920, inclusive, were produced. The figures are of interest in that they further indicate a pronounced drop in traffic movement in 1919 and show a somewhat heavier traffic movement in 1917 and 1918 than in 1920.

Early in March, 1920, in response to a circular inquiry addressed to them by the superintendent of motive power of lines east, the district superintendents of motive power at Albany and Oswego, N. Y., and at Avis, Pa., reported that they would be able to put the motive power of their several districts in good condition by the first of the following October and that it would be unnecessary to send locomotives to outside shops for repairs. The district superintendent at Depew, N. Y., on the other hand reported that the monthly output of the Depew shop had declined from 67 locomotives in 1917 to 57 in 1919—counting all repairs, the included class repairs having declined from 48 to 40—making it necessary to send between 40 and 50 locomotives to Rome, Avis, and West Albany in the latter year, and that in 1920, with an increased number of locomotives, a total output of not less than 70 per month would be necessary to maintain his power.

At the time the Rome contract was negotiated that plant was closed down. From correspondence introduced in evidence it appears that early in January the Rome company appealed to the Railroad Administration for repair work to enable it to continue operations, and that whereas respondent, upon reference of the request through the regional director first proposed to send 3 locomotives to Rome, with the possibility of more if the price should be satisfactory, it was persuaded in the end to increase the number to 50 to make practicable the reopening of the plant and considered sending an additional 50 or more in order to warrant the necessary extension of the boiler-shop facilities. In fact, in July, 1920, one of respondent's officials recommended to his executive superior a contract for the repair of 250 locomotives at Rome at a minimum rate of 50 per year for five years. In 1917 respondent contracted with the Rome plant for the repair of 50 locomotives and early in 1918 for the conversion of 8 others, the cost of which work also appears to have been excessive. In 1915 respondent likewise contracted with the American company for the repair of 20 locomotives, and

correspondence of record indicates that the charges of that company were considered high.

The mileage theory is challenged by a representative of the Railroad Administration, formerly assistant director in that service, division of operation, in charge of mechanical matters. He insists that mileage is solely a record of performance, not determinative of condition, in that it discloses what a locomotive has done since last repaired or what is expected of it when turned out of shop, whereas locomotives are shopped only upon inspection and not upon the mere fact of mileage performed. He adds that mileage performances, in turn, depend greatly upon neglect of or attention to running repairs as shortening or lengthening the intervals between class repairs.

It is manifest that service mileages alone, upon which the shop credits are based, also take no account of tonnages handled and the consequent variations in load or strain which obviously go far to determine the periods of service and vitally affect the life of the locomotive. In the same way, assigned mileages and service and shop-mileage ratios, without reference to tractive power, afford no guide to capacity to handle tonnage. In brief, into the determination of motive-power conditions, as of any given time or relatively as between different periods, other factors than mileages necessarily enter.

For example, respondent computes an annual average decrease of 12.2 per cent in shop-miles output during the last 14 months of federal control in comparison with the prefederal three-year period. As that percentage is greater than the corresponding percentage decrease in locomotive-miles run, it might be taken to denote under-maintenance of power in the latter part of federal control. Yet during 1919, which spanned the major part of the 14-month period, the number of stored serviceable locomotives increased more than 500 per cent over 1916, more than twice that percentage over 1917, and nearly 350 per cent over 1918, federal control's heaviest year. The cited decline in shop output may therefore be attributable in no small degree to a lessened necessity for class repairs. At least, the indicated gradual increases in locomotive ownership and in average and aggregate tractive power, considered in connection with the exhibited decrease in total car-miles and locomotive-miles during federal control as compared with the preceding and subsequent periods, are in themselves hardly consistent with a depreciated condition of motive power at the end of federal control.

In other important particulars the mileage theory would appear not to afford comprehensive and accurate comparisons. As already explained, the mileage output of the shops, that is, the mileage



restored to the locomotives, is based upon and determined by the mileage run out in service, apparently depending only upon whether repairs are made at all or are such as are deemed to restore full terms of locomotive service. In giving credits to the shops, therefore, or in computing the increased man-hours per 1,000 shop-miles produced, or in any like comparison, no account appears to be taken of the fact, for example, that in the case of one locomotive a class-1, class-2, or class-3 repair might be necessary to restore a full term of service, while in the case of another of the same type, having made the same service mileage under more favorable conditions, a class-4 or class-5 repair might suffice, all depending upon the physical condition of each. While the repair work actually performed on the aggregate motive power naturally would assume general averages in the course of extended periods, respondent's test would measure the shop output in a given period or in comparison of one period with another by the fluctuating mileages run by the locomotives. A certain mileage in one period and a higher or lower mileage in the next might or might not reflect the comparative shop output of repairs.

As otherwise indicative of the undertaking faced upon the resumption of its property, respondent points out that in the ensuing 10 months an operating volume, measured in car-miles, 6.2 per cent in excess of the average during federal control was handled with but 100.77 per cent of the number of locomotives owned during the federal period. But that slightly increased number also represented an increase of 2.1 per cent in aggregate tractive power. The enlarged capacity for traffic movement is emphasized by the greater average of miles run per month per locomotive in service, disclosed in one of the foregoing tabular comparisons submitted by respondent as indicative of the serviceability of the locomotives owned and their ability to perform mileage, and by the slightly increased ratio of car-miles produced per locomotive-mile run.

As hereinbefore stated in other terms, respondent shows 233 more locomotives on line at the end of federal control than in the first month of that period, and also shows 27 more in serviceable condition at the later date, but representing a reduced percentage of the total on line. The 674 shown as out of service for repairs at the later date check upon subtraction of the number in serviceable condition from the total on line, but the 394 shown as similarly out of service in the first month of federal control are 74 short of the difference between the contemporaneous numbers of serviceable and owned locomotives. The apparently correct number would be 15.15 per cent of the total on line. On the other hand, a larger number and a higher percentage of the total on line were taken into shop

at the end of federal control, and, while the corresponding number and percentage of locomotives due for shop within 30 days also were somewhat greater, a larger number and percentage received the necessary repairs in company shops at the later date. It should be added that the 674 shown as out of service at the end of federal control comprised 355 awaiting class repairs and 319 awaiting unclassified repairs; and it also appears that 16 of the 355 were returned to service for varying periods before receiving class repairs.

By a memorandum dated February 9, 1920, respondent's principal witness reported to the then federal manager that on the mileage basis, taking percentages good and percentages run out, December 31, 1919, as compared with December 31, 1917, the lines east had declined 9 per cent and the lines west had improved 1 per cent, and that this was borne out by the respective ratios of shop-miles to service-miles, excluding work performed in contract shops in both years. Taking into consideration increased work due to increased weights of engines and the miles per engines shopped, there was a decrease in shop output of 13.1 per cent on lines east and 11.4 per cent on lines west, 1919 as against 1916, the latter having been respondent's heaviest locomotive-mileage year. Restating 1919 on the basis of the 1917 performance indicated an increase in number of men per engine dispatched from shop of 45.6 per cent on lines east and 37 per cent on lines west. A further comparison based on the number of engines dispatched from shop per available engine pit disclosed an average increase of 8.7 per cent east and 15.1 per cent west, 1918-1919 over 1916-1917. From every standpoint, therefore, it was observed, the decreased shop efficiency had been greater on lines east than west, but it was explained that as on January 1, 1919, there was mild weather and comparatively light traffic, with stored available power in good condition in both regions, it was necessary to reduce forces, particularly on lines west. Evidently, the reductions were confined to the latter region, as the stated net result was that in June the lines-west forces were 16 per cent less and the lines-east forces were 2.2 per cent greater than in January, and in December the respective forces were 4.2 per cent less and 8.1 per cent greater than in January.

Viewing, in the light of what was so reported, the alleged handicap with which private control was resumed as more particularly a reduced shop potentiality, we note from a further exhibit detailing the shop and roundhouse forces during those years, lines east and west, submitted by respondent upon request, that the months of January, February, and March, 1920, in which the first three contracts were made and federal control was superseded by private control, individually exceeded every month in 1919, and that the average for 1920, inclusive of the reductions in forces, exceeded the 1919 average

by approximately 6 per cent. This improvement is confirmed by the better results previously stated.

No comparative tonnage statistics are submitted, but as in some degree indicative of the trend of traffic in the opening months of 1920, in which three of the contracts were negotiated, the revenue and nonrevenue net ton-miles in January and February were in each month less than the monthly averages throughout 1916 to 1919, inclusive, and, as before stated, the total for 1920 fell below 1917 and 1918, but exceeded 1919.

While the data pertaining to the state of the motive power are not satisfactory and the record affords no certain means of ascertaining respondent's maximum shop capacity, there is abundant reason to question the necessity for the repair of at least the major portion of the locomotives in the contract shops. Similar contracts in earlier years had made known the enhanced cost of class repairs in such shops, admittedly not properly equipped for such work; and while the maintenance of motive power at all times is of prime importance, recourse to the costlier outside means should be had only in compelling circumstances and in any case limited to its necessities. Even conceding that reasonably anticipated traffic demands so early in 1920 and the limitations of shop facilities and forces justified the invocation of some outside assistance, it quite clearly appears that this was carried considerably further than the exigencies required. It is disclosed that, although reductions in respondent's shop forces were considered in September and begun in October, 23 locomotives were sent to the American shops, under a contract for no particular number, in the face of that program of reduction. As before noted, also, there is evidence of record reasonably leading to the conclusion that the scope of the Rome contract, if not its real inception, was primarily in the interest of that plant, albeit with some immediate assistance in mind and with a view to the future availability of the plant as an accessory in case of need. This and other considerations included in the foregoing review tend to impeach in turn the award of the Baldwin contract for so large a number of locomotives. It further appears, as stated, that of the stipulated numbers respondent eventually withheld 21 locomotives from Baldwin and 5 from Rome on the ground of insufficient funds, also assigned as the moving cause of the shop-force reductions. Contract obligations are not to be lightly regarded, of course, but the financial situation that began with the business depression in September or October nevertheless led successively to reductions in shop forces and to the arbitrary withholding of locomotives from those plants; and the same self-interest that prompted the latter action, apparently without evoking protest from either plant, might well have induced respondent to

attempt to obtain assent to an earlier cessation of the contract work and the longer retention of its own less expensive organization.

We conclude that the record does not establish a seriously depreciated condition of motive power at the end of federal control, and that, even conceding that with the advent of 1920 or upon respondent's resumption of its property its shops were not fully able to cope promptly with all current demands, nevertheless, by an energetic effort at least the larger number of the locomotives in question could have been repaired in those shops within the time in which the contract work was done and at a materially lower cost.

The foregoing review and comment are not intended to suggest, and the evidence does not indicate, that any sinister disregard of respondent's interests or otherwise dishonest motive entered into the award or execution of the contracts.

POTTER, *Commissioner*, dissenting:

The facts in this case are quite similar to those developed by our investigation of the repair of locomotives of the Pennsylvania Railroad Company in outside shops in 1920. My dissent there is applicable here. Respondent's officers in the exercise of their judgment determined that under the conditions prevailing in 1920 outside help was necessary. I fail to see the power or authority of this Commission to review a subject so completely within the discretion of respondent's management and so foreign to our proper function.

The contracts with the American and Lima locomotive works were entered into in January, 1920, during federal control. The contract with the Rome locomotive works was negotiated during federal control although actually signed in March, 1920. Respondent can not be held responsible for the conditions which led up to and which, in the opinion of officials of the Railroad Administration, justified those contracts. The contract with the Baldwin Locomotive Works was negotiated in June and July and closed in August. The number of locomotives in shop and awaiting classified repairs had increased from 372 in March to 417 in August in spite of the assistance rendered by the outside shops under the other contracts. Moreover, there is direct testimony to the effect that the bad condition of motive power on the lines of the respondent east of Buffalo rendered further help imperative.

The majority report undertakes to criticize at some length respondent's method of ascertaining the condition of motive power by comparison of mileage restored to service by its shops with mileage run out in service. Whatever may be said for or against the method, it has been in use by the respondent, according to the rec-

ord. since 1908, and respondent's officials testify that it is considered reliable as a reflection of the actual condition of motive power upon respondent's system. This comparison has support in the showing that during the three years preceding federal control the respondent had contracted for the construction of an annual average of 215 modern locomotives, retiring during the same period an annual average of 129 obsolete locomotives, while during federal control the Railroad Administration contracted for the construction of an annual average of only 60 locomotives, and retired an average of 31. It is certain that when the work in question was arranged for the general condition of power upon respondent's system was precarious. The percentage of serviceable locomotives at the end of February, 1920, had dropped to 79.8 per cent of the total locomotives on line. Miles run per locomotive engine failure during the three years preceding federal control average 20,354 as compared with an average of 10,968 during federal control and 4,418 and 4,752 in January and February, 1920. The emergency situation required drastic treatment.

There is nothing to indicate that the output of respondent's shops for classified repairs could have been materially increased during 1920. The average shop forces of the respondent greatly exceeded the average during the preceding two years and until the latter months of 1920 the respondent was employing all the men it could get. Shop time was increased from eight to nine hours from the middle of February until toward the end of September. In addition to its own, the respondent was called upon to repair some 85 locomotives for other companies. Traffic as indicated by net ton-miles increased greatly in 1920 as compared with the preceding year.

The actual output of class repairs in 1920 in the New York Central shops was not sufficient to care for the number of locomotives taken out of service for class repairs. The following table, prepared from data in the record, shows the situation for 1920:

Month.	In and awaiting shop for class repairs.	Taken out of service for class repairs.	Output, class repairs, New York Central shops only.	Month.	In and awaiting shop for class repairs.	Taken out of service for class repairs.	Output, class repairs, New York Central shops only.
January.....	317	149	149	July.....	403	225	205
February.....	355	169	131	August.....	417	245	222
March.....	372	203	186	September.....	430	222	191
April.....	392	223	202	October.....	441	207	173
May.....	390	198	200	November.....	428	192	174
June.....	387	198	194	December.....	390	169	181

There is no evidence of bad faith upon the part of respondent's officials. The contracts of January and March, negotiated during federal control, were the result of conditions then existing. The Baldwin contract in August was given before the business depression had manifested itself, at a time when respondent's shops, as shown in the foregoing table, were not meeting the requirements of the system.

There is nothing in the evidence to show that the cost of the repairs was unreasonably high. We may not assume that high costs are excessive.

Respondent sent some locomotives to outside shops for repairs after reductions had been made in the hours worked and number of men employed in the New York Central shops. Fifty-four locomotives were sent to Baldwin's after the middle of September and 23 to the American shops. The company was under contractual obligation to send 100 locomotives to Baldwin's during this period and of this number 21 were withheld. Out of 50 contracted to be sent to the Rome locomotive works 5 were withheld. We should commend performance of a contract rather than its breach. While there was no contractual obligation to send any particular number to the American works and 23 locomotives were sent there after the respondent had commenced cutting down in its own shops, the testimony shows that the cutting down of the hours of work and the number of workmen employed was regarded as a temporary expedient and that it was thought wise to hold the arrangement that had been made. The respondent retrenched not only in its own shops but also in the amount of work sent to the outside shops.

If the reference in the majority report to the Rome contract is intended to intimate improper scope or inception in the interest of that plant, the intimation is not justified either by the report or by the record. There is no evidence that respondent entered into it for any reason except its own necessities. Nor are any considerations shown to "impeach in turn the award of the Baldwin contract for so large a number of locomotives." If there were any such considerations, we should refer to them directly. The testimony shows that respondent's officials thought they had done very well for their company under the rush conditions of 1920 when they obtained an agreement by Baldwin's to repair 100 locomotives. The table showing the output of repairs in the New York Central shops set forth above indicates that if there had been no depression in business in the latter part of 1920 the relief given to respondent's shops by this contract would have been inadequate. The majority report closes with a finding that the evidence does not indicate that any sinister disregard of respondent's interests or otherwise dishonest motive

entered into the award or execution of the contracts. This dooms the preceding implications in the references to the Rome and Baldwin contracts.

If we place ourselves in the position of the management, in the midst of problems arising out of the heavy traffic in 1920, the then present and prospective traffic, the depreciated condition of its motive power, the failure of its own shops to meet the demand upon them for repairs, the impossibility of forecasting the unexpected slump in later months, the record does not warrant disapprobation.

CAMPBELL, *Commissioner*, dissenting:

We find no proof of improper motive and no willful act of wrong, but the record does suggest that the officials in charge may have acted largely upon intuition rather than upon thorough investigation. If they had had before them the facts that subsequent events disclosed they might have done differently. But human nature must be recognized. The railroads had just been returned to their owners and private ownership and operation were on trial. The possibility of public criticism that was likely to follow failure to handle traffic expeditiously had to be reckoned with. This contract was made at a time when almost everyone connected with the operation of a railroad was acting under pressure, traffic was heavy, and heavier traffic was in prospect. Naturally there must have been more or less feeling of nervous haste. Under all the circumstances, while the record does not warrant unqualified approval of the action taken by the officials in charge, it is perfectly clear to me that we should not condemn them.

LEWIS, *Commissioner*, dissenting:

Although the circumstances in the two cases are slightly dissimilar, for the reasons stated in my dissent in the *Pennsylvania Railroad Company Case*, 66 I. C. C., 694, I desire to register a like dissent to the conclusions reached by the majority in this case.

COMMISSIONERS HALL and DANIELS also dissent.

No. 11770.

TALLULAH COTTON OIL COMPANY

v.

ALABAMA &amp; VICKSBURG RAILWAY COMPANY ET AL.

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Submitted November 21, 1921. Decided March 7, 1922.

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Rates on cork waste and ground cork, in mixed carloads, and on nails in bags and in kegs, in less than carloads, from Beaver Falls, Pa., to Tallulah, La., found unreasonable. Reparation awarded.

*Thomas P. Goodwin* for complainant.

*J. E. Monroe* for defendants.

## REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

## BY DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant, a corporation manufacturing vegetable oils at Tallulah, La., alleges that the rate charged on a carload shipment of cork waste, ground cork, and nails, shipped March 3, 1920, from Beaver Falls, Pa., to Tallulah, La., was unreasonable to the extent that it exceeded the aggregate of the intermediate rates contemporaneously in effect. We are asked to establish a rate for the future which shall not exceed that aggregate and to award reparation. Rates will be stated in amounts per 100 pounds.

The shipment consisted of 3,476 pieces of cork waste, in machine-compressed shapes, sheets, or slabs, without binder, weighing 18,311 pounds, 73 bags of ground cork weighing 4,890 pounds, and 1 bag and 4 kegs of wire nails weighing 397 pounds. It moved from Beaver Falls to Tallulah via Vicksburg, Miss., on a bill of lading issued by the Pennsylvania, which specified routing "I. C., V. & S. P." Freight charges of \$278.53 were collected at a rate of \$1.18. A joint fourth-class rate of \$1.205 applied on waste and ground cork, in mixed carloads, minimum weight 20,000 pounds, and on nails in kegs, in less than carloads. A joint second-class rate of \$1.87 applied on nails in bags, in less than carloads. Undercharges are outstanding.

Contemporaneously there were in effect on cork waste in machine-compressed shapes, sheets, or slabs, without binder, in mixed carloads with ground cork, in bags, fourth-class rates of 76.5 cents from Beaver Falls to Vicksburg, and 25 cents from Vicksburg to Tallulah,



a total of \$1.015. There were also in effect a second-class rate of 76.5 cents on nails in bags, and a commodity rate of 47.5 cents on nails, in kegs, in less than carloads, from Beaver Falls to Vicksburg, and a second-class rate of 35.5 cents on nails in bags, and a fourth-class rate of 25 cents on nails in kegs from Vicksburg to Tallulah; making through rates of \$1.12 on the nails in bags and 72.5 cents on the nails in kegs. The fourth section departures were protected by appropriate applications heard in another proceeding not yet decided.

We find that the rates applicable were, are, and for the future will be unreasonable to the extent that they exceeded, exceed, or may exceed the aggregates of intermediate rates contemporaneously in effect; that complainant made the shipment as described and paid and bore the charges thereon; that it has been damaged in the amount of the difference between the charges paid and those that would have accrued at the rates herein found reasonable; and that it is entitled to reparation, with interest. The weight of the nails in bags and in kegs is not separately shown. Complainant should comply with rule V of the Rules of Practice.

An appropriate order will be entered.

66 I. C. C.

INVESTIGATION AND SUSPENSION DOCKET No. 1439.

WINDOW GLASS FROM KANSAS POINTS TO SIOUX  
FALLS, S. DAK.

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INVESTIGATION AND SUSPENSION DOCKET No. 1477.

WINDOW GLASS FROM OKLAHOMA POINTS TO SIOUX  
FALLS, S. DAK.

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*Submitted February 16, 1922. Decided March 14, 1922.*

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Proposed increased rate on window glass, in carloads, from Kansas and Oklahoma points to Sioux Falls, S. Dak., found not justified. Suspended schedules ordered canceled.

*L. P. Nash* for respondents.

*R. D. Springer* for protestants.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

By schedules filed to become effective November 15, 1921, and January 24, 1922, respondents proposed to increase the rate on window glass, in carloads, from Kansas and Oklahoma producing points to Sioux Falls, S. Dak., from 46 cents to 49.5 cents. Upon protest of the Sioux Falls Commercial Club and the Board of Railroad Commissioners of South Dakota, the operation of the schedules was suspended until April 14 and May 24, 1922, respectively. No hearing was had in Investigation and Suspension Docket No. 1477, but the parties stipulated that the issues presented in that proceeding might be determined upon the record in Investigation and Suspension Docket No. 1439. The cases have accordingly been consolidated and will be disposed of in one report. Rates are stated in cents per 100 pounds.

A comparison of the rates from the Kansas and Oklahoma producing points to Sioux Falls and related destinations is set forth below. The distances given are approximate. These rates have remained unchanged for a number of years except for the increase made

66 I. C. C.

pursuant to general order No. 28 of the Director General of Railroads, and the general increase of 1920.

To—	From Oklahoma.		From Kansas.	
	Distance.	Rate.	Distance.	Rate.
	<i>Miles.</i>	<i>Cents.</i>	<i>Miles.</i>	<i>Cents.</i>
Chicago, Ill. ....	726	46	643	46
St. Louis, Mo. ....	511	37	426	37
Peoria, Ill. ....	606	41	613	41
Des Moines, Iowa. ....	446	37	363	37
Albert Lea, Minn. ....	637	46	554	46
Sioux City, Iowa. ....	562	49.5	479	46
St. Paul, Minn. ....	756	49.5	673	49.5
Sioux Falls, S. Dak.:				
Present. ....	653	46	570	46
Proposed. ....		49.5		49.5

Sioux Falls now takes the same rates as Chicago. This is generally true as to all commodities from Kansas and Oklahoma. Pursuant to our order in *Watertown Sash & Door Co. v. Director General*, 55 I. C. C., 186, the rates on window glass from Kansas and Oklahoma to South Dakota points are based upon the commodity rate to Sioux City, Sioux Falls, or Pipestone, Minn., plus 75 per cent of the fifth-class rate beyond. The rate situation in Minnesota and northern Iowa appears to be in a somewhat chaotic condition. Most of the Minnesota points are reached via the Sioux City gateway, and yet some of them take the same rates on this traffic as Peoria, while others take rates as low as St. Louis and Des Moines. For instance, the rate from Oklahoma and Kansas to Morningside, Iowa, within the switching limits of Sioux City, is 37 cents, or respectively 9 and 12.5 cents lower than the rates from Kansas and Oklahoma to Sioux City, and the same as the rate to Des Moines and St. Louis for distances ranging from 363 to 511 miles.

Respondents state that the proposed increase of rate from Oklahoma points to Sioux Falls was in order to align it with the rate from Oklahoma to Sioux City, and the proposed increase of rate from Kansas points to Sioux Falls was in order to preserve the parity between the Kansas and Oklahoma rates, which is generally maintained to points in this territory. They admit that the rates to northern Iowa and Minnesota are in need of adjustment, but contend that this affords no reason for postponing the correction of the Sioux Falls rate.

Respondents compare the proposed rate to Sioux Falls with rates ranging from 50.5 to 75.5 cents in effect on window glass between various points in the southwest for distances ranging from 241 to 721 miles. They also refer to rates of 88, 96, and 98 cents to the Kansas points from St. Louis, Chicago, and St. Paul, respectively.

They point out that in *Bute Co. v. A., T. & S. F. Ry. Co.*, 52 I. C. C., 380, we found that a rate on window glass of 45 cents as of June 24, 1918, from Kansas points to Houston, Tex., 620 miles, was not unreasonable, but was unduly prejudicial to the extent that it exceeded by more than 7 cents the rate from the same points to Waco, Tex., 470 miles.

The maintenance of a higher rate on window glass from Oklahoma to Sioux City than to Sioux Falls is protected by an appropriate application which has not yet been assigned for hearing and no opinion is expressed thereon. Sioux Falls is in direct competition with Des Moines, Albert Lea, and other cities in this territory, and while the proposed increase would remove the fourth section departure as to Sioux City, it is obvious that it would disturb the long-standing spread between the rates to Sioux Falls and practically every other related point.

We find that the proposed schedules have not been justified. An order will be entered requiring their cancellation and discontinuing this proceeding.

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No. 12160.  
ARMOUR & COMPANY  
*v.*  
DIRECTOR GENERAL, AS AGENT, AND LEHIGH VALLEY  
RAILROAD COMPANY.

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*Submitted November 9, 1921. Decided March 7, 1922.*

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Charges on frozen beef livers, in carloads, from the float bridge of the Lehigh Valley Railroad at Jersey City, N. J., to pier A, Jersey City, for export, found unreasonable. Reparation awarded.

*Paul E. Blanchard and W. W. Manker* for complainant.

*E. H. Burgess* for Lehigh Valley Railroad Company.

*John F. Finerty* for Director General.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

By DIVISION 3:

No exceptions were filed to the report proposed by the examiner.

Complainant is a corporation engaged in the meat-packing business at Chicago, Ill. By complaint, filed January 27, 1921, it alleges that the rate charged for the transportation on November 19, 1919, of 13 carloads of frozen beef livers from the float bridge of the Lehigh Valley at Jersey City, N. J., to pier A of that carrier in Jersey City was unjust and unreasonable. We are asked to award reparation and to prescribe a reasonable rate for the future.

The shipments, destined for export under through billing from western points of origin, were moved by car float of the New York Central from the terminal freezer of that carrier at Thirty-third street, New York, N. Y., to the side of the steamship *Yamhill*, docked at pier A. Delivery was to have been made direct from car float to vessel. But because of an accumulation of barges alongside the vessel, resulting from a longshoremen's strike, prompt ship-side delivery could not be made and the steamship officials advised complainant that delivery would have to be made from the pier alongside the vessel, or else the vessel would clear without complainant's shipments. Thereupon, pursuant to complainant's instructions, the cars were floated to the float bridge of the Lehigh Valley adjacent to pier A, and thence moved by that carrier along its tracks and out upon the pier, a total distance of about 1 mile.

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The Lehigh Valley does not hold itself out to receive freight at this float bridge from floats of the New York Central or other roads serving points west. Consequently no commodity rate or specific switching charge was or is published for such a movement. The minimum third-class rate of 17 cents per 100 pounds prescribed by general order No. 28 was assessed. The charges per car at this rate ranged from \$49.98 to \$106.13.

Complainant contends that the service performed was an ordinary switching movement for which a switching charge per car not in excess of \$5 should have sufficed. For the future a charge of \$7 is sought. As tending to establish the propriety of the level of such charges, complainant compares them with switching charges from \$2 to \$6.50 per car for distances ranging from 2 to 15 miles contemporaneously applicable between points in and about Jersey City on the lines of the Erie, Pennsylvania, and Delaware, Lackawanna & Western.

The Lehigh Valley took the leading part in the defense which was directed solely against establishment for the future of the low charge sought. It fears that such a charge would open up this part of its terminal to the car floats of other roads which it would be unable to accommodate. The evidence is clear that under ordinary conditions no necessity exists for extending the use of these facilities to the New York Central and other lines, as their cars can be handled in car floats direct to ship side. The movement was unique and was permitted because the roads serving New York harbor were then under federal control and operated as part of a unified system. The Lehigh Valley can handle traffic from the west into Jersey City over its own rails.

At the hearing the representatives of the Director General expressed willingness to admit that the shipments were overcharged, as this irregular method of delivery was performed for the convenience of the New York Central and should not be chargeable to the shipper. Nevertheless the evidence shows that complainant asked for this delivery, and, as the shipments had been moved to the billed destination in New York harbor, the extra movement to the float bridge and beyond to pier A amounted to a reconsignment for which defendant was entitled to a reasonable charge.

An examination of the local switching tariffs of the Delaware, Lackawanna & Western, applicable during the period of movement, shows that a charge of \$10 per car was maintained for moving freight coming off floats of other railroads from its float bridge at Jersey City to cold-storage warehouses in Jersey City or Hoboken, N. J. The New York Central's tariff governing reconsignment

during this period provided a charge of \$5 per car for the reconsignment of freight which had reached billed destination on its line.

We find that the charges collected were unreasonable to the extent that they exceeded \$10 per car, plus a reconsignment charge of \$5 per car; that complainant made the shipments as described and paid and bore the charges thereon; that it has been damaged thereby in the amount of the difference between the charges paid and those which would have accrued at the charges herein found reasonable; and that it is entitled to reparation, with interest. Complainant should comply with rule V of the Rules of Practice.

The record does not show that the Lehigh Valley is violating any section of the act in closing this part of its terminal to outside traffic and no order for the future will be entered.

66 I. C. C.

No. 12287.  
GULF CITY MANUFACTURING COMPANY  
v.  
DIRECTOR GENERAL, AS AGENT.

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*Submitted November 21, 1921. Decided March 7, 1922.*

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Rate on oyster shells, in carloads, from Apalachicola, Fla., to Mobile, Ala., found unreasonable. Damage to complainant not established. Complaint dismissed.

*R. G. Cobb* for complainant.

*John F. Finerty* and *E. C. Blanchard* for defendant.

REPORT OF THE COMMISSION.

DIVISION 3, COMMISSIONERS HALL, EASTMAN, AND CAMPBELL.

BY DIVISION 3:

Exceptions were filed by defendant to the report proposed by the examiner. Our conclusions differ from those suggested by him.

Complainant, a corporation, crushes oyster shells at Mobile, Ala. It alleges that the charges collected on three carloads of oyster shells shipped from Apalachicola, Fla., to Mobile during January, 1919, were unjust and unreasonable. Reparation only is sought. Rates are stated in amounts per net ton unless otherwise indicated.

The southern classification provides for fertilizer rates on oyster shells, and, if those are lacking, for sixth-class rates. The shipments moved over the Apalachicola Northern to River Junction, Fla., 80 miles, and the Louisville & Nashville beyond, 265 miles, total, 345 miles. Charges were collected at the applicable combination rate of \$6.50, composed of a joint sixth-class rate of \$4.40 to Montgomery, Ala., and a commodity rate of \$2.10 back to Mobile. These rates were applicable on fertilizer and their use in the construction of the combination was authorized under rule 5(b) of our Tariff Circular 18-A. Effective February 25, 1919, a joint rate of \$2.70 was established. Complainant relies in part upon the subsequently established rate, contending that defendant and the initial line promised to provide for its establishment at an earlier date.

When the shipments moved, commodity rates on ground and crushed oyster shells applied over the Louisville & Nashville from various southern points to numerous destinations. Typical of these



is a rate of \$3.10 from Biloxi, Miss., to Nashville, Tenn., 544 miles, yielding ton-mile earnings of 5.7 mills. Commodity rates also applied on oyster-shell dust and powdered oyster shells from Mobile to numerous points on the Louisville & Nashville, including stations between Pensacola, Fla., and River Junction. To Sneads, Fla., 6 miles west of River Junction, the rate was 8.5 cents per 100 pounds, equivalent to \$1.70 per ton, and yielded ton-mile earnings of 6.6 mills. The relative transportation characteristics of these commodities and oyster shells are not disclosed, although it appears that the value of the latter is only 35 cents per ton and that the average weight of complainant's shipments was 74,266 pounds. The rate applicable yielded ton-mile earnings of 18.8 mills, and the \$2.70 rate 7.8 mills.

Defendant contends that the rates to and from Montgomery compare favorably with other fertilizer rates in this territory, but the distance to and from Montgomery is 583 miles, or 238 miles greater than over the route of movement. The record contains no specific evidence as to what fixed the level of the \$2.70 rate. It is the equivalent of the class-P rate then in effect to River Junction, plus \$1.70 beyond, the rate then in effect from Mobile to Sneads on oyster-shell dust or powdered oyster shells.

The Apalachicola Northern, which was not under federal control, is not a party to this proceeding, but defendant was a party to the joint rate to Montgomery, and the nonjoinder is immaterial. *Orgill Bros. & Co. v. N., C. & St. L. Ry.*, 39 I. C. C., 513.

We find that the rate charged was unreasonable to the extent that it exceeded \$2.70 per ton. The record does not establish that complainant paid and bore the freight charges, or was otherwise damaged, and the complaint will be dismissed.

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## FINANCE DOCKET No. 1600.

IN THE MATTER OF THE CONSTRUCTION OF THE WORD  
"DEFICIT" AS USED IN PARAGRAPH (a) OF SECTION  
204 OF THE TRANSPORTATION ACT, 1920.

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*Submitted November 12, 1921. Decided February 9, 1922.*

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*Held*, That the word "deficit," as used in paragraph (a) of section 204 of the transportation act, 1920, means a deficiency or decrease in a carrier's railway operating income for that portion (as a whole) of the period of federal control during which it operated its own railroad as compared with its average railway operating income for the corresponding portions of the test period.

*B. M. Robinson, B. B. Cain, George H. Parker, S. S. Ashbaugh, and Marcellus Green* for American Short Line Railroad Association.

*Ernest S. Ballard* for Muscatine, Burlington & Southern Railroad Company; *George B. Webster* for St. Louis, Kennett & Southeastern Railroad Company; *Edward E. Gann* for Wisconsin & Northern Railroad Company; *James W. Carmalt* for West Virginia Northern Railroad Company and Wisconsin Northwestern Railway; *Victor Remy* for Illinois Northern Railway; *W. M. Hopkins* for Blytheville, Leachville & Arkansas Southern Railroad Company and Springfield Terminal Railway Company; and *Arthur Hale* for Asherton & Gulf Railway Company and other carriers.

## REPORT OF THE COMMISSION.

## BY THE COMMISSION:

This matter was assigned for hearing for the purpose of formally determining a question of first importance in connection with the administration of section 204 of the transportation act, 1920, which provides for the reimbursement of railway companies for losses sustained during that portion of the federal control period during which they were privately operated. These companies are commonly referred to as the "short lines."

Paragraph (c) of section 204 provided that as soon as practicable after March 1, 1920, we should ascertain for every carrier, for every month of the federal control period during which its railroad was not under federal operation, its railway operating deficit, or its railway operating income, hereinafter termed "control return," and the average of its railway operating deficit or of its railway operat-

ing income for the three corresponding months of the test period, hereinafter termed "test return"; it being further provided in the section that these "control returns" and "test returns" should be used as bases for computing the amounts payable to the carriers. Pursuant to this requirement we issued, on March 4, 1920, an order requiring carriers to report to us the data deemed necessary in ascertaining these "returns," and prescribing a form for such reports. In this order we announced, in effect, that carriers which did not sustain a railway operating deficit for that portion of the federal control period during which they were privately operated were not covered by section 204. This announcement was made out of abundant caution at a time when we had had no opportunity to give to the section, especially to paragraph (a) thereof, the critical and mature consideration essential to its correct interpretation. Notwithstanding this announcement, various carriers whose railway properties were privately operated during a portion of the federal control period, and which, for such period of private operation as a whole, had railway operating incomes, but smaller incomes than their average incomes for corresponding portions of the test period, presented to us requests for certification of payments under section 204. As we were still in doubt as to the proper construction of this section, these requests were informally denied. Thereupon these carriers, hereinafter called the protestants, asked for a hearing, which was held on November 4, 1921, and at which their representatives made oral arguments and submitted briefs.

In paragraph (a) the term "carrier" is declared to mean a carrier which, among other things, "sustained a deficit in its railway operating income for that portion (as a whole) of the period of federal control during which it operated its own railroad or system of transportation." The phrase "deficit in its railway operating income," in that definition, is not employed by accountants. In the system of accounts prescribed by us, the phrase "railway operating deficit" is employed in a sense antithetical to "railway operating income," and, thus used, means an excess of operating expenses and taxes over operating revenues. It is apparent that the phrase "deficit in railway operating income," if employed to express the same idea, is an inaccurate use of words, which are self-contradictory, because, just as a deficit and an income can not exist at the same time, so there can not be a deficit in income. There is no doubt, however, that this phrase, "deficit in railway operating income," is used in paragraphs (b), (c), and (f) to express an excess of railway operating expenses over railway operating revenues in one period without reference to another period, just as in paragraphs (d) and (e) the word "deficit" is used in the same sense. If this meaning be given to the phrase

"deficit in railway operating income," as used in paragraph (a) the effect is to limit the benefits of section 204 to those carriers which sustained railway operating deficits for that portion of the federal control period during which they were privately operated. The protestants contend that this construction results in injustice and unfair discrimination, in that it excludes from the benefits of the section those carriers which had a net income for that portion of the federal control period during which they were privately operated, although they may have suffered substantial decreases in income as compared with their incomes in the test period. They insist that Congress could not have intended such an inequitable result. And they point out that paragraph (a) may be harmonized with the remainder of the section by construing the phrase "deficit in railway operating income" to mean a deficiency or decrease in railway operating income, as compared with the average income for the corresponding portions of the test period.

The basic principle which underlies all rules of statutory construction is that the purpose, the intent of the lawmaker constitutes the law. And it is now thoroughly established that, where the language of a statute is of doubtful meaning, the true interpretation is to be ascertained by an inquiry into the purpose, the spirit of the law as disclosed by its entire context, by the history of its enactment, by statutes in *pari materia*, and by the general system of legislation of which the statute in question is a part.

Postponing, for the present, consideration of the meaning of the phrase, "deficit in its railway operating income," as it occurs in the definition of "carrier" in paragraph (a), we shall first examine the remaining paragraphs of the section, considered without reference to paragraph (a).

Paragraph (f) provides that in the exceptional case of a carrier which operated its railroad for less than a year during, or for none of, the test period, the computation prescribed by the section shall not be used, but there shall be payable to such carrier its railway operating deficit sustained under private operation during the federal control period. The obvious reason for this exception lies in the impracticability of measuring the injury to such a carrier by a comparison of its "control returns" with its "test returns," because of its lack of an adequate test-period experience. With this single exception, the amounts payable to carriers under the section are to be computed by us in accordance with the method set forth with unusual detail in paragraphs (c) to (g), inclusive.

By paragraph (c) we are directed to ascertain for every carrier, for every month of the federal control period during which it was privately operated, its "control return" and its "test return." By

paragraph (d) we are directed to ascertain the amount obtained from a comparison of the carrier's "control return" with its "test return" for every month in which such comparison shows a decrease or loss in its income, it being provided that the sum of these amounts shall be credited to the carrier. By paragraph (e) we are directed to ascertain the amount obtained from a comparison of the carrier's "control return" with its "test return" for every month in which such comparison shows an increase or gain in its income, it being provided that the sum of these amounts shall be credited to the United States. Paragraph (f) provides that, if the sum of the amounts so credited to the carrier under (d) exceeds the sum of the amounts so credited to the United States under (e), the difference shall be payable to the carrier. And by paragraph (g) we are directed to certify this difference, the amount payable to the carrier, to the Secretary of the Treasury.

In view of the doubtful meaning of the phrase, "deficit in railway operating income," as used in paragraph (a), it is fortunate that these remarkably specific directions, in themselves and unaided by that paragraph, so fully disclose the purpose of Congress. The exception of the single case, above noted, of a carrier which operated its property for less than a year during, or for none of, the test period, in which case, because of the inadequacy of its test-period experience, the use of the prescribed computation is impracticable, emphasizes the purpose of Congress that the reimbursement of all carriers, with that one exception, shall be governed by the method of computation prescribed in these specific directions. An analysis of these provisions, omitting from consideration the exceptional case to which they are inapplicable, reveals the following facts which evidence the intention of Congress:

1. We are directed to ascertain the "control return" and the "test return" for every carrier for every month while under private operation in the federal control period, wholly without reference to the result of its operations during such period of private operation, whether a deficit or an income.

2. We are directed to credit to the carrier the sum of all decreases in its income, wholly without reference to whether the decrease is (1) the difference between a "control" deficit and a smaller "test" deficit, or (2) the difference between a "control" income and a larger "test" income, or (3) the sum of a "control" deficit plus a "test" income.

3. We are directed to credit to the United States the sum of all increases in the carrier's income, wholly without reference to whether the increase is (1) the difference between a "control" income and a smaller "test" income, or (2) the difference between a "control"

deficit and a larger "test" deficit, or (3) the sum of a "control" income plus a "test" deficit.

4. If the sum of all decreases in the carrier's income exceeds the sum of all increases in its income, we are directed to certify the difference to the Secretary of the Treasury. This difference is the total decrease in income reflected by monthly comparisons of the carrier's "control" operations with its "test" operations.

5. These directions for computing and certifying the amounts payable to carriers contain no authority for the certification of deficits sustained under private operation during the federal control period.

These provisions are mandatory. They are expressed with a precision which precludes misunderstanding.

Applying them to a concrete case: There is nothing improbable in the supposition that a carrier might have had an income for every month while under private operation in the federal control period and a larger income for each corresponding month of the test period. In such a case, a comparison of the "control" income with the "test" income, each month, would show a decrease in the carrier's income. Under the mandatory direction in paragraph (d) the sum of these decreases in income must be credited to the carrier. There would be nothing to credit to the United States under paragraph (e). Obviously, the difference between the sum of the decreases in income so credited to the carrier and the sum of the amounts credited to the United States, namely, nothing, would be the sum of the decreases in income, and this amount would be payable to the carrier under paragraph (f). With such a record before us, it would unquestionably be our duty to certify this amount to the Secretary of the Treasury. Our refusal to do so would be a direct violation of the mandatory direction in paragraph (g). And yet this carrier would have had, not a deficit, but an income, for that portion (as a whole) of the federal control period during which it operated its own railroad.

Conversely, there is nothing improbable in the assumption that a carrier might have sustained a deficit for every month while under private operation in the federal control period and a larger deficit for each corresponding month of the test period. In such a case, a comparison of these two deficits, each month, would show an increase in the carrier's income. These increases would be credited to the United States. There would be nothing to credit to the carrier. Consequently, no amount would be payable to the carrier. And yet this carrier would have sustained a deficit during that portion (as a whole) of the period of federal control during which it operated its own railroad.

It has thus been conclusively demonstrated that, under these plain provisions, prescribing the method of computing when and in what

amount a carrier is entitled to reimbursement, the fact that a carrier has sustained a deficit while privately operated during the federal control period is not determinative either of the carrier's right to reimbursement or of the amount to which it may be entitled. A carrier which sustained a deficit in such period of private operation may or may not be entitled to the benefits of the section, and, if it be entitled to reimbursement, the amount payable to it under the prescribed method of computation is wholly unrelated to its deficit in such period of private operation. These conclusions are clearly deducible from paragraphs framed with unusual particularity and precision and wholly free from ambiguity.

It is important to observe, however, that Congress, in enacting section 204, used the same word with different meanings in different connections. Although, with the one exception noted, the section contains no authority for the payment of deficits sustained by carriers while under private operation in the federal control period, nevertheless the section is officially entitled, "Reimbursement of Deficits During Federal Control." If the word, "deficits," in this title, were construed in its technical sense, as used by accountants, and as it is used in paragraphs (d) and (e) of the section, that is, as meaning an excess of operating expenses over operating revenues, in one period without reference to another period, the title would not be descriptive of the subject matter of the section. The section is a provision for the reimbursement, not of a carrier's deficit sustained under private operation in the federal control period, but of the decrease or loss in its income for such period of private operation as compared with its average income for corresponding portions of the test period. This being the subject matter of the section, and it being presumed that the title was intended to accurately describe that subject matter, it is entirely plain that Congress, in the title, used the word "deficits" in the sense of decreases or losses in federal control incomes as compared with test-period incomes.

Congress was guilty of no inaccuracy in thus employing the word "deficits" in the title. It simply made use of the general and broader meaning of the word which accords with its derivation and with the definitions given to it by lexicographers of recognized authority. "Deficit" is literally the third person present indicative of the Latin verb, *deficere*, and means "it is wanting" or "it falls short of." It is defined by Webster as deficiency in amount or quality; a falling short, especially of income. There is nothing unusual in the fact that the word deficit is thus used in a narrow and technical sense in certain paragraphs of the section and in its general and broader meaning in the title. In *American Security Company v. District of Columbia*, 224 U. S., 491, 494, the Supreme Court  
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of the United States, referring to a recurrent phrase in a statute, said: "But it needs no authority to show that the same phrase may have different meanings in different connections."

We are convinced that not only in the title but also in the definition of "carrier" in paragraph (a) of section 204, the word "deficit" is used in its general and broader meaning; that is, a deficiency, a falling short, a decrease. The measure of which the income falls short is the standard or test with which the income is compared. It is to be noted that in this same paragraph (a), in which the word "deficit" is used in defining "carrier," the "test period" is also defined. And, in the section, the amount of "reimbursement of deficits during federal control" is explicitly based on comparisons of income for every month of private operation in the federal control period with the averages of income for the three corresponding months of the test period, technical or absolute deficits for either period being treated as minus quantities.

If the word "deficit," in the definition of carrier in paragraph (a) is construed as a deficiency or decrease in income under private operation in the federal control period as compared with the income during the test period, the definition of "carrier" is completely harmonized with both the letter and spirit of the remaining paragraphs of the section. If, however, this word is given its technical meaning as used by accountants the effect is to make the right to reimbursement contingent upon the carrier's having sustained a technical or absolute deficit while privately operated in the federal control period, a result which is in direct conflict with the plan of reimbursement set forth in detail in the section. The rule is thoroughly established that if a word or phrase is susceptible of two constructions, one of which will effectuate the evident purpose of the statute and one of which is inconsistent or in conflict with that purpose, the former must control. *Johnson v. Southern Pacific Co.*, 196 U. S., 1, 18. We are, therefore, unable to resist the conclusion that, in the definition of "carrier" in paragraph (a), Congress meant those carriers which sustained losses in income under private operation in the federal control period as compared with the test period.

The idea that Congress, in the definition of "carrier," intended those carriers only which sustained actual deficits under private operation in the federal control period, is not only in direct conflict with the plan of reimbursement detailed in the remaining paragraphs of the section but it is negated by the fact that such a classification of carriers would be purely arbitrary and wholly unsupported by any sound reason. The purpose of the section is to reimburse carriers for losses sustained because of federal control. It is obvious that a carrier which had a net income under private



operation in the federal control period may have sustained a loss by reason of federal control equal to or greater than that of a carrier which sustained a deficit during such period of private operation. And there is nothing in the circumstances surrounding these carriers which raises any presumption that those which sustained actual deficits were more necessitous than those which had net incomes. Moreover, such a classification leads to results which are so inequitable as to be absurd. Let it be supposed, for example, that, of two carriers, one had an actual deficit in the federal control period of \$2 and an actual net income in the "test period" of \$998, and the other had an actual net income in the "test period" of \$2,002 and an actual net income in the federal control period of \$2. According to the method of computation prescribed by the section, the first carrier lost because of federal control \$1,000 and the second carrier lost because of federal control \$2,000. Nevertheless, under the classification we are considering, the first carrier would be entitled to reimbursement, while the second, whose loss was twice as great, would be denied. If, however, it be further supposed that the second carrier had switched one car less at a \$4 switching charge, or had refunded a charge of \$4 previously collected, the effect would be to convert its actual net income of \$2 into an actual deficit of \$2, with the result that it would be entitled, under the classification, to reimbursement in the amount of \$2,004. We can not attribute to Congress the intention to make a classification which would result in such absurdities.

The soundness of the conclusion reached by us is further reinforced by a consideration of the history of this legislation and of other acts in *pari materia* which show that it was the consistent policy of Congress to measure the compensation of all roads for any injury resulting from federal control by their average incomes during the test period.

When the government assumed control of the railroads the problem of providing for their just compensation during federal control was met by the federal control act which, in effect, guaranteed to all roads incomes during federal control equal to the average of their incomes during the test period. This guaranty was given to every road, without reference to the result of its federal control operations, whether a deficit or an income.

A great number of the roads, the short lines, were relinquished from federal control in June, 1918, but all the large trunk lines were operated by the government during the entire period of federal control. During this period the operation of the roads was necessarily conducted primarily in the interest of the military needs of the government, and at the close of the federal control period the roads

were in a somewhat disorganized state, and traffic and business conditions were very different from what they were in 1917 before the roads were taken under federal control. Upon the return of the roads to private control the problem was presented of making such provision that when returned and before they were able to adjust themselves to the new conditions the roads should not suffer insupportable losses by reason of the state of affairs caused by federal control. This problem was met by section 209 of the transportation act, 1920, which applied to every road under federal control at the end of the federal control period and also to those roads which had been relinquished from federal control but which had competed for traffic, or connected, with a railroad at any time under federal control. This section guaranteed to these roads, for the six months following the termination of federal control, incomes equal to the average of their incomes during six months of the test period. This guaranty was given to each of these roads without reference to the result of its operations during the guaranty period, whether a deficit or an income.

The federal control act provided that the President might relinquish control of any railroad prior to July 1, 1918, and that no right to compensation under that act should accrue after such relinquishment. Congress realized that the short lines, if released from federal control, would be at a great disadvantage by reason of the continued federal operation of the roads with which they competed or connected. It was apparent that the short lines would be compelled to pay the same wages, the same prices for supplies as paid by roads under federal control, that they would have to conform to the administrative rulings relating to operation, distribution of cars, and routing of traffic which the government prescribed for roads under federal control, and that the traffic which would normally go over these roads would in many cases be diverted over roads under federal control. Accordingly, on June 29, 1918, Congress passed a resolution which provided that no road which connected or competed with a road under federal control should be relinquished. This resolution was vetoed by the President. Its passage, however, indicates that Congress was aware of the injury which relinquishment would cause the short lines and that its intention was to prevent that injury by providing that they should remain under the protection of the guaranty provisions of the federal control act.

The House bill (H. R. 4378), which was one of the bills under consideration prior to the enactment of the transportation act, contained no provision for reimbursement of the short lines for the federal control period. Upon consideration of this bill by the Senate an amendment was inserted providing that, as to lines which

had been taken under federal control and had been subsequently relinquished regardless of the wishes of their owners "this act shall constitute a guaranty to the extent of any actual operating deficit, including taxes, that may have been incurred during the period January 1, 1918, to the date when this act takes effect." This amendment, which was a proposal to measure the losses to the short lines caused by federal control by their actual deficits sustained during the federal control period, was rejected in conference. The statement of the managers on the part of the House upon the substitute bill (H. R. 10453) referred to section 204 as follows: .

The Senate amendment in section 5 contained a provision that railroads not operated by the Government during the period of Federal control should be paid the entire amount of their deficit during the Federal control period. No such provision was contained in the House bill. The conferees recommend, in section 204 of the conference bill, that carriers which sustained a deficit in railway operating income under their own operation during the period of Federal control shall be paid the amount by which such deficit exceeds the corresponding deficit during the test period. The computation of the amount payable is made by determining the deficit or income for each month of the Federal control period during which the carrier operated its own line and for the three corresponding months of the test period averaged together. In the case of a carrier which was in operation for less than a year during the test period the amount payable is the entire amount of the deficit during the period of Federal control.

The rejection of this Senate amendment affords conspicuous proof of the intention that the reimbursement of the short lines should not be contingent upon their having sustained deficits during the federal control period but that the amount of reimbursement should be determined by a comparison of the "deficit or income" for the federal control period with the "deficit or income" for the test period. The intention thus manifested conforms in every way with the consistent policy evidenced by the federal control act and by section 209 of the transportation act. We find nothing in the history of this legislation which suggests that Congress, in enacting section 204, saw any reason or intended to depart from that sound and settled policy.

We are of opinion and hold that the word "deficit," as used in paragraph (a) of section 204, should be construed to mean a deficiency or decrease in income under private operation in the federal control period as compared with the average income for corresponding portions of the test period.

No order is necessary.

*MEYER, Commissioner, dissenting.*

The holding of the majority, in my opinion, contemplates the payment of a large sum to the short-line railroads without warrant

of law, through the disregard of what was intended to be an important condition limiting the benefits of that section to carriers of a particular class. The effect of the majority opinion is to treat that portion of the definition of "carrier" here under discussion as surplusage; for the process of computation detailed in paragraphs (c), (d), (e), culminating in paragraph (f), would in itself result in reimbursing all of the short lines in the amount of their ~~decreases~~ in income as compared with the test-period income.

The word "deficit" is one of frequent use in accounting, and when used in connection with railway earnings has become so common as to have passed from the class of technical accounting terms. It occurs many times in the reports of the proceedings in Congress and before its committees prior to the passage of the transportation act. A letter of the American Short Line Railroad Association, as printed in the record, discusses the deficits of the short lines in particular years, and lists of such deficits were transmitted to Congress. The report of the conferees explaining section 204, as quoted in the majority opinion, speaks of a comparison of "deficit in railway operating income" in the federal control period with the "corresponding deficit during the test period." The word "deficit" is used 13 additional times in section 204, and is also used in section 209, and in all of these instances it is admitted that it has no reference to a comparison of the income for one period with that of another. It thus appears that the application of the word in paragraph (a) of section 204, as contended for by the short lines and accepted by the majority, is without precedent or parallel.

There is nothing mysterious about the expression "deficit in railway operating income" as distinguished from the word "deficit" or the term "operating deficit." The latter term customarily refers to a deficiency of revenues as compared with expenses, but the federal control act and the transportation act require consideration of the additional income items of taxes, equipment rents, and joint-facility rents; hence, the addition of the descriptive words. The original measure providing for the relief of the short lines "relinquished regardless of the wishes of the owners" proposed to guarantee them "to the extent of any actual operating deficit; including taxes, that may have been incurred during the period January 1, 1918, to the date when this act takes effect;" and for the subsequent period, to guarantee an income "computed in the manner prescribed in the said act of March 21, 1918, for ascertaining what is commonly known as the "standard return." Here we have the two measures of reimbursement contrasted in the same paragraph. Apparently reimbursement of actual deficits was the extent of the relief sought by the short lines at that time.

Great stress is placed by the majority upon the monthly comparisons required under paragraphs (c), (d), (e), and (f). These comparisons, however, have no bearing upon the selection of the roads to be reimbursed. The purpose of the comparison by months is to provide for seasonal variations of traffic, to which the short lines are peculiarly subject. For example, a short line which was under private operation during 18 months of the federal control period, and which has its principal traffic in summer or winter, would gain or lose improperly by having its earnings for the 18 months compared with the average for 18 months of the test period as a whole, including all seasons. A comparison by months is therefore necessary regardless of whether all of the carriers are entitled to the benefits of the section or not.

The construction adopted makes the short lines a favored class. They are guaranteed an income at least equal to that of the test period, and at the same time are able to keep any income earned in excess of that measure. They were in possession of their properties and were therefore in position to profit by any opportunities for increased earning, and, according to the brief filed in behalf of the short lines, some of them did so profit in substantial amounts. The trunk lines, on the other hand, were dispossessed of their properties, and, regardless of the earnings of those properties while under federal control, were compensated for their use only upon the basis of the test-period income. The status of the short lines, under this holding, is even better than that of the roads in the guaranty period subsequent to federal control; for in order to avail themselves of the guaranty the carriers were required to obligate themselves to pay to the government any income in excess of the test-period measure.

The majority report appears to be animated by a belief that hardship will be suffered by certain short lines if we adhere to the interpretation twice placed by us upon this section. But, if true, this would not justify us in extending the benefits conferred by section 204 beyond the limits placed upon them by Congress. It is our function to administer the law, not to make it. If Congress had intended to extend the terms of section 204 to all short-line roads, rather than to the more necessitous of such roads, appropriate language would have been used. If our former interpretation is incorrect, the courts could have rectified our error in an appropriate case; and, if correct, the remedy of the carriers, if any, is an appeal to Congress for an amendment of the law.

I am authorized to say that COMMISSIONERS HALL, ATTORISON, and EASTMAN concur in this dissent.

## APPENDIX.

## REIMBURSEMENT OF DEFICITS DURING FEDERAL CONTROL.

Section 204. (a) When used in this section—

The term "carrier" means a carrier by railroad which during any part of the period of Federal control, engaged as a common carrier in general transportation, and competed for traffic, or connected, with a railroad under Federal control, and which sustained a deficit in its railway operating income for that portion (as a whole) of the period of Federal control during which it operated its own railroad or system of transportation; but does not include any street or interurban electric railway which has as its principal source of operating revenue urban, suburban, or interurban passenger traffic, or sale of power, heat, and light, or both; and

The term "test period" means the three years ending June 30, 1917.

(b) For the purposes of this section—

Railway operating income or any deficit therein for the period of Federal control shall be computed in a manner similar to that provided in section 209 with respect to such income or deficit for the guaranty period; and

Railway operating income or any deficit therein for the test period shall be computed in the manner provided in section 1 of the Federal Control Act.

(c) As soon as practicable after March 1, 1920, the Commission shall ascertain for every carrier, for every month of the period of Federal control during which its railroad or system of transportation was not under Federal operation, its deficit in railway operating income, if any, and its railway operating income, if any, (hereinafter called "Federal control return"), and the average of its deficit in railway operating income, if any, and of its railway operating income, if any, for the three corresponding months of the test period taken together, (hereinafter called "test period return"): *Provided*, That "test period return," in the case of a carrier which operated its railroad or system of transportation for at least one year during, but not for the whole of, the test period, means its railway operating income, or the deficit therein, for the corresponding month during the test period, or the average thereof for the corresponding months during the test period taken together, during which the carrier operated its railroad or system of transportation.

(d) For every month of the period of Federal control during which the railroad or system of transportation of the carrier was not under Federal operation, the Commission shall then ascertain (1) the difference between its Federal control return, if a deficit, and its test period return, if a smaller deficit, or (2) the difference between its test period return, if an income, and its Federal control return, if a smaller income, or (3) the sum of its Federal control return, if a deficit, plus its test period return, if an income. The sum of such amounts shall be credited to the carrier.

(e) For every such month the Commission shall then ascertain (1) the difference between the carrier's Federal control return, if an income, and its test period return, if a smaller income, or (2) the difference between its test period return, if a deficit, and its Federal control return, if a smaller deficit, or (3) the sum of its Federal control return, if an income, plus its test period return, if a deficit. The sum of such amounts shall be credited to the United States.

(f) If the sum of the amounts so credited to the carrier under subdivision (d) exceeds the sum of the amounts so credited to the United States under subdivision (e), the difference shall be payable to the carrier. In the case

of a carrier which operated its railroad or system of transportation for less than a year during, or for none of, the test period, the foregoing computation shall not be used, but there shall be payable to such carrier its deficit in railway operating income for that portion (as a whole) of the period of Federal control during which it operated its own railroad or system of transportation.

(g) The Commission shall promptly certify to the Secretary of the Treasury the several amounts payable to carriers under paragraph (f). The Secretary of the Treasury is hereby authorized and directed thereupon to draw warrants in favor of each such carrier upon the Treasury of the United States for the amount shown in such certificate as payable thereto. An amount sufficient to pay such warrants is hereby appropriated out of any money in the Treasury not otherwise appropriated.

66 L. C.

## CASES DISPOSED OF BY THE COMMISSION WITHOUT PRINTED REPORT DURING THE TIME COVERED BY THIS VOLUME.

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I. & S. 1370. GRAIN AND GRAIN PRODUCTS BETWEEN STATIONS IN OKLAHOMA AND STATIONS IN KANSAS AND NEBRASKA. Proposed increases in rates on grain and products between points in Oklahoma and points in Kansas and Nebraska. *W. R. Scott, E. H. Hogueland, W. P. Huston, and C. V. Topping* for protestants. *J. C. LaCoste* and *R. N. Nash* for respondents. Proceeding discontinued March 17, 1922.

I. & S. 1397. ROUTING ON LUMBER FROM C., M. & ST. P. RY. IN WASHINGTON VIA MARENGO, WASH. Proposed increases on lumber from points in Washington when routed via Marengo, Wash. *W. C. McCulloch* and *H. N. Proebstel* for protestants. *A. J. Laughon* for respondents. Proceeding discontinued February 13, 1922.

I. & S. 1406. RESTRICTION OF SWITCHING ABSORPTION TO COMPETITIVE TRAFFIC AT ST. LOUIS, MO., AND EAST ST. LOUIS, ILL. Absorption of switching charges at St. Louis, Mo., and East St. Louis, Ill. *H. R. Brashear* for protestant. *J. C. LaCoste* for respondent. Proceeding discontinued January 10, 1922.

I. & S. 1411. STONE FROM CHICAGO AND WEST TO CALIFORNIA TERMINALS AND INTERMEDIATE POINTS. Proposed increases in rates on stone from Chicago, Ill., and points in western territory to California terminals and intermediate points. No appearances for protestants or respondents. Proceeding discontinued February 13, 1922.

I. & S. 1415. GRAIN FROM IOWA, MISSOURI, AND MINNESOTA TO TEXARKANA, ARK.-TEX. Proposed increases in rates on grain from points in Iowa, Minnesota, and Missouri to Texarkana, Ark.-Tex. *R. A. Jeanneret* and *W. R. Scott* for protestants. *F. H. Towner, B. F. Parsons, and G. H. Muckley* for respondents. Proceeding discontinued March 13, 1922.

I. & S. 1418. BRICK, CLAY, AND CLAY ARTICLES TO SAULT STE. MARIE, ONTARIO. Proposed increases in rates on brick, clay, and clay articles to Sault Ste. Marie, Ontario. *J. P. Blackwood* for protestant. *D. P. Connell, A. H. Lossow, and J. H. Rees* for respondents. Proceeding discontinued January 10, 1922.

I. & S. 1419. AGRICULTURAL IMPLEMENTS FROM MISSOURI RIVER POINTS TO DESTINATIONS IN KANSAS AND MISSOURI. Proposed increases in rates on agricultural implements from Missouri River points to points in Kansas and Missouri. *T. J. Slattery* for protestant. No appearances for respondents. Proceeding discontinued February 13, 1922.

I. & S. 1422. ABSORPTION SWITCHING CHARGES OF THE KANSAS CITY STREET RAILWAYS. Spotting car allowances at Kansas City, Mo. *J. D. Cornell* for protestant. *F. H. Moore* for respondents. Proceeding discontinued March 13, 1922.

I. & S. 1428. INCREASED LUMBER RATES TO NEWPORT NEWS, VA. Proposed increases in rates on lumber to Newport News, Va. *W. S. Creighton* for protestant. *J. W. Perrin* for respondent. Proceeding discontinued February 13, 1922.

I. & S. 1429. RAW SUGAR FROM LOUISIANA PRODUCING POINTS TO DESTINATIONS IN TEXAS. Proposed increases in rates on raw sugar from points in Louisiana to points in Texas. *S. C. Griffin, G. D. Ulrich, T. W. Trelford, jr., E. H. Thorn-*



ton, *J. J. Schwartz*, and *H. H. Haines* for protestants. *J. A. Brown* and *F. A. Leland* for respondents. Proceeding discontinued February 13, 1922.

I. & S. 1435. LUMBER FROM MOREHEAD, KY., TO EASTERN POINTS. Proposed increases in rates on lumber from Morehead and other Kentucky points to eastern points. *R. W. Kiskadden* for protestant. *O. E. Lowry* for respondent. Proceeding discontinued March 1, 1922.

I. & S. 1436. CLASS AND COMMODITY RATES BETWEEN CALIFORNIA, OREGON, AND WASHINGTON. Proposed increases in class and commodity rates between points in California, Oregon, and Washington. *H. A. Bishop* for protestants. *H. W. Klein* and *J. E. Lyons* for respondents. Proceeding discontinued February 13, 1922.

I. & S. 1440. SILICA SAND FROM ILLINOIS AND OTHER POINTS TO PACIFIC COAST AND INTERMOUNTAIN TERRITORY. Proposed increases in rates on silica sand from points in Illinois to Pacific coast and intermountain territory. *J. H. Kase* and *R. E. Riley* for protestants. *F. E. Andrews* for respondents. Proceeding discontinued February 13, 1922.

I. & S. 1441. SEWER PIPE AND DRAIN TILE FROM CINCINNATI, OHIO, AND OTHER POINTS TO VIRGINIA CITIES. Proposed increased rating on sewer pipe and drain tile from Cincinnati, Ohio, and other points to Virginia cities. *A. Hill* for protestant. *W. J. Kelly* and *B. W. Herrman* for respondents. Proceeding discontinued March 20, 1922.

I. & S. 1442. GRAIN AND GRAIN PRODUCTS BETWEEN ST. LOUIS, MO., AND C. & N. W. ILLINOIS STATIONS. Proposed increases in rates on grain and grain products between St. Louis, Mo., and points in Illinois. *C. Ripplin* for protestant. *S. G. Nethercot* for respondent. Proceeding discontinued March 13, 1922.

I. & S. 1444. PROPORTIONAL CLASS RATES BETWEEN SEATTLE, TACOMA, WASH., AND PORTLAND, OREG. Increased proportional class rates between Seattle and Tacoma, Wash., and Portland, Oreg. *J. H. Lothrop* and *S. J. Wettrick* for protestants. No appearances for respondents. Proceeding discontinued January 20, 1922.

I. & S. 1448. RATES AND TERMINAL CHARGES ON COAL TO GULF PORTS. Proposed increases in rates and terminal charges on coal destined to Gulf ports. *E. E. Wood*, *R. Reeves*, *S. L. Yerkes*, *C. E. Jones*, *C. Giesow*, and *R. G. Cobb* for protestants. *B. J. Rowe*, *F. S. Reigel*, *E. R. Olver*, and *E. A. DeFuniak* for respondents. Proceeding discontinued March 13, 1922.

I. & S. 1452. REFINED SULPHATE OF MAGNESIUM, ATLANTIC SEABOARD TO JOHNSON CITY, TENN. Proposed increases in rates on refined sulphate of magnesium from Atlantic seaboard to Johnson City, Tenn. *W. C. Mitchell* for protestant. *J. J. Cottrell* for respondent. Proceeding discontinued February 13, 1922.

I. & S. 1459. CHROME, IRON AND MANGANESE ORE BETWEEN POINTS IN OFFICIAL CLASSIFICATION TERRITORY. Proposed reduction in rates from Lake Erie ports to interior points. *F. B. James* and *E. H. Scott* for protestant. *H. Campbell* for respondent. Proceeding discontinued February 8, 1922.

I. & S. 1466. INTERMEDIATE SWITCHING BY THE NEW YORK CENTRAL R. R. AT TOLEDO, OHIO. Proposed increases in switching charges at Toledo, Ohio. *L. G. Macomber* for protestant. *M. S. O'Connor* for respondent. Proceeding discontinued February 13, 1922.

I. & S. 1475. INTERMEDIATE APPLICATION OF TRANS-CONTINENTAL WESTBOUND RATES ON TRAFFIC TO CALIFORNIA TERMINAL AND INTERMEDIATE POINTS. Proposed increases in class and commodity rates to California terminal and inter-

mediate points. *H. W. Prickett* for protestant. *R. H. Countiss* and *W. J. Kelly* for respondents. Proceeding discontinued February 16, 1922.

I. & S. 1484. GROUND LIMESTONE BETWEEN POINTS ON THE PENNSYLVANIA R. R. EAST OF PITTSBURGH. Proposed reduction in rates on limestone from points east of Pittsburgh, Pa., to various destinations. *J. H. Gosnell*, *W. A. Glasgow*, *H. M. Camp*, and *A. S. Olmsted* for protestants. *J. B. Large* for respondent. Proceeding discontinued March 13, 1922.

10947 and Sub-No. 1. CAMBRIA STEEL CO. ET AL. v. DIRECTOR GENERAL ET AL. Rates on manganese ore, carloads, from Phillipsburg, Mont., to Wharton, N. J. *F. L. Ballard* for complainants. *B. W. Scandrett* and *J. F. Finerty* for defendants. Complaint satisfied. Dismissed February 13, 1922.

11502. EGGEET ICE CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on ice, carloads, from Weller, Colo., to Denver, Colo. *C. Whitehead* and *A. L. Vogt* for complainant. *J. F. Finerty*, *E. E. Whitted*, and *J. Q. Dier* for defendants. Transferred to Special Docket for adjustment, January 30, 1922.

11556. SAGINAW SPECIALTY CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on veneering, thin lumber, and cigar-box lumber, carloads, from Magasine, Ala., to Saginaw, Mich. *F. F. Kleinfeld* and *D. MacDonald* for complainant. *H. L. Walker*, *G. M. Nolan*, *F. R. Newman*, and *W. Henderson* for defendants. Transferred to Special Docket for adjustment, January 30, 1922.

11684. AMERICAN AGRICULTURAL CHEMICAL CO. v. DIRECTOR GENERAL, AS AGENT. Rates on iron byrites from Gouverneur, N. Y., to Baltimore, Md. *E. B. Leiby* for complainant. *J. F. Finerty* for defendant. Transferred to Special Docket for adjustment, February 20, 1922.

11969. HAZARD COAL OPERATORS EXCHANGE ET AL. v. L. & N. R. R. Co. Alleges defendant's mine rating rules and car distribution for transportation of coal from mines in Kentucky and Tennessee are unduly preferential. *Norman & Graham* for complainants. *E. S. Jouett* and *W. A. Northcutt* for defendants. Dismissed on request of complainants, February 13, 1922.

12172. LODWICK LUMBER CO. ET AL. v. A., T. & S. F. RY. CO. ET AL. Rates on lumber and lumber articles from points in Texas and Louisiana to points in Texas, Oklahoma, Kansas, Missouri, Colorado, New Mexico, and Arizona. *L. F. Daspiit* for complainants. *J. J. Coleman*, *J. S. Hershey*, *G. B. Ross*, and *J. R. Stein* for defendants. Complaint satisfied. Dismissed January 10, 1922.

12180. TAR HEEL MANGANESE CO. v. S. RY. CO. ET AL. Rates on manganese ore from Mount Alry, N. C., to Anniston, Ala. *W. P. Tingley* for complainant. *J. F. Finerty* and *C. J. Bizzy* for defendants. Transferred to Special Docket for adjustment, January 9, 1922.

12183. DARLING & CO. v. DIRECTOR GENERAL, AS AGENT. Rates on imported nitrate of soda from Baltimore, Md., to Chicago, Ill. *N. D. Belnap*, *L. M. Walter*, and *J. S. Burchmore* for complainant. *J. F. Finerty* for defendant. Transferred to Special Docket for adjustment, January 8, 1922.

12185 and Sub-Nos. 1-17. DU PONT DE NEMOURS & CO. v. DIRECTOR GENERAL, AS AGENT. Rates on cotton linters, carloads, from points in southern and western States to Hopewell, Va. *H. S. Farrow* and *V. S. Thomas* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, February 13, 1922.

12219 and Sub-No. 1. LOCKWOOD MFG. CO. v. N. Y., N. H. & H. R. R. CO. ET AL. Rates on oilcloth from Passaic, N. J., Buffalo, N. Y., and Taunton, Mass., to Kansas City, Mo. *J. H. Tedrow* for complainant. *C. C. P. Rausch*, *C. N. Richards*, and *H. C. Bush* for defendants. Dismissed on request of complainant, March 13, 1922.

12392. CLARENDON REFINING CO. ET AL. v. A. C. L. R. R. CO. ET AL. Rates on fuller's earth from Ellenton, Fla., to Clarendon, Pa. *F. B. Dow* and *W. Cress* for complainants. *F. W. Gwothmey* for defendants. Dismissed on request of complainants, February 13, 1922.

12404. AMERICAN NITRO-PHOSPHO CORP. v. DIRECTOR GENERAL, AS AGENT. Rates on dry ground phosphate rock from Lamba, S. C., to West Orange, N. J. *E. A. Hodgkinson* for complainant. *M. B. Pierce* and *E. C. Blanchard* for defendants. Transferred to Special Docket for adjustment, January 30, 1922.

12510. BERGMAN PRODUCE CO. ET AL. v. DIRECTOR GENERAL, AS AGENT. Rates on sweet potatoes, carloads, from points in Louisiana and Texas to South Mansfield, La. No appearances for complainants. *F. H. Wood*, *J. R. Bell*, *Baker*, *Botts*, *Parker & Garwood*, *C. B. Garwood*, *C. H. Owen*, and *J. A. Lynch* for defendants. Dismissed on request of complainants, February 13, 1922.

12559. KAW RIVER SAND & MATERIAL CO. ET AL. v. A., T. & S. F. RY. CO. Rates on sand from Kansas City, Mo.-Kans., to points in Missouri. *E. H. Hogueland* and *H. R. Lebrecht* for complainants. *S. C. Bates* for intervener. *N. S. Brown*, *J. D. Cornell*, *G. H. Muckley*, *H. A. Scandrett*, *J. M. Souby*, *M. G. Roberts*, *T. J. Norton*, *F. E. Andrews*, *K. L. Burgess*, *A. B. Enoch*, *Winston*, *Strawn & Shaw*, *H. G. Herbel*, *J. M. Chaney*, and *C. S. Burg* for defendants. Dismissed on request of complainants, February 13, 1922.

12561 and Sub-No. 1. INDIANOMA REFINING CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on petroleum from points in Texas, Louisiana, and Oklahoma to official classification territory, stopped at East St. Louis, Ill., for refining, storing, or other privileges. *E. A. Haid* for complainant. *E. F. McCarthy* for intervener. *K. L. Richmond*, *E. P. Vernia*, *C. H. Blatchford*, *W. A. Northcutt*, *J. F. Dalton*, *W. L. Kinter*, *P. B. Warren*, *J. Stillwell*, *W. C. Plunkett*, *Williams*, *Loyall & Tunstall*, *E. D. Hotchkiss*, *J. F. Finerty*, *W. L. Lewis*, *M. M. Joyce*, *D. Evans*, *Henry & Henry*, *W. J. Stevenson*, *R. L. Burnap*, *Winston*, *Strawn & Shaw*, *M. B. Pierce*, *C. Brown*, *C. J. Risey*, *O. R. Webber*, *C. D. Clark*, *M. R. Waite*, *T. J. Norton*, *F. E. Andrews*, *F. W. Gwothmey*, *H. G. Herbel*, *J. M. Chaney*, *A. B. Enoch*, *D. L. Younger*, *M. G. Roberts*, *L. H. Strasser*, *Thompson*, *Barwise*, *Wharton & Hiner*, *G. H. Muckley*, *E. B. Perkins*, *A. H. Kiskadden*, *J. R. Turney*, *D. Uptegrove*, *C. S. Burg*, *Capps*, *Cantey*, *Hanger & Short*, *A. P. Humburg*, *C. G. Austin*, *J. R. Barse*, *R. H. Widdicombe*, *T. J. Freeman*, *G. Thompson*, *V. E. Anderson*, *K. L. Richmond*, and *A. L. Burford* for defendants. Dismissed on request of complainant, March 13, 1922.

12590. LOOKOUT PAINT MFG. CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on fire clay from Alameda, Ala., to Chattanooga, Tenn. *J. G. Fletcher* for complainant. *J. F. Finerty* and *C. J. Risey* for defendants. Transferred to Special Docket for adjustment, February 27, 1922.

12592. LEHIGH PORTLAND CEMENT CO. v. A. G. S. R. R. CO. ET AL. Rates on cement from Mitchell, Ind., to points in Kentucky, Tennessee, Mississippi, Alabama, and Louisiana. *F. E. Paulson* for complainant. *L. Bagby*, *F. Lyon*, *Norman & Graham*, *F. C. Taylor*, *W. H. Hart*, and *H. B. Ros* for interveners. *K. L. Richmond*, *W. A. Northcutt*, *M. G. Roberts*, *E. A. Hotchkiss*, *N. S. Brown*, *J. Stillwell*, *F. H. Wood*, *C. Brown*, *F. W. Gwothmey*, *C. J. Risey*, *M. R. Waite*, *H. G. Herbel*, *J. M. Chaney*, *A. P. Humburg*, *D. L. Younger*, *S. S. Ashbaugh*, *J. C. Rich*, *J. A. Brown*, and *F. P. Vernia* for defendants. Dismissed on request of complainant, March 13, 1922.

12655. FITGER BREWING CO. v. N. P. RY. CO. ET AL. Rates on beer, carloads, from Duluth, Minn., to Superior, Wis. *F. H. Treeford* for complainant. *B. W.*

*Scandrett* for defendants. Dismissed on request of complainant, January 10, 1922.

12659. KAW RIVER SAND & MATERIAL CO. ET AL. v. A., T. & S. F. RY. CO. ET AL. Rates on sand from Kansas City, Mo.-Kans., to points in Kansas. *E. H. Hogue-land* and *H. R. Lebrecht* for complainants. *M. G. Roberts*, *H. A. Scandrett*, *J. M. Souby*, *G. H. Muckley*, *R. A. Brown*, *H. G. Herbel*, *J. M. Chaney*, *T. J. Norton*, *F. E. Andrews*, *C. S. Burg*, *K. L. Burgess*, and *A. B. Enoch* for defendants. Dismissed on request of complainants, February 13, 1922.

12703. LEHER v. P. & R. RY. CO. ET AL. Rates on anthracite coal from St. Clair, Pa., to Port Reading, N. J. *S. B. Houck* for complainant. *W. L. Kinter* and *J. F. Finerty* for defendants. Dismissed on request of complainants, February 13, 1922.

12764. PROCTER & GAMBLE MANUFACTURING CO. v. DIRECTOR GENERAL, AS AGENT. Rates on coal from Mount Olive and Staunton, Ill., to Kansas City, Kans. *R. B. Phillips* for complainant. *S. B. Houck* for intervener. *J. F. Finerty* for defendant. Dismissed on request of complainant, March 13, 1922.

12791. LINCOLN CHAMBER OF COMMERCE v. D. & R. G. R. R. CO. ET AL. Rates on coal from Dunmore, Pa., to Monroe, Iowa, reconsigned to Otley, Iowa, and of one carload of lump coal from Caddell, Colo., to Elsie, Nebr., reconsigned to Wallace, Nebr. *J. J. Ledwith* and *W. S. Whitten* for complainant. *C. D. Mahaffie*, *H. A. Triebel*, and *W. P. O'Rourke* for defendants. Dismissed on request of complainant, February 13, 1922.

12795. FIRESTONE TIRE & RUBBER CO. v. DIRECTOR GENERAL, AS AGENT. Rates on pneumatic rubber tires from Akron, Ohio, to San Francisco, Calif., for export. *A. C. Miller* and *E. S. Ballard* for complainant. *T. M. Woodward* and *J. R. Ong* for defendants. Dismissed on request of complainant, February 13, 1922.

12815. WEST ALABAMA LUMBER CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on lumber from Forest, Miss., to Washington, D. C., reconsigned to Rochester, N. Y. *B. K. Fisk* for complainant. *H. L. Walker* for defendants. Dismissed on request of complainant, February 13, 1922.

12817. WEST ALABAMA LUMBER CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on one carload of yellow-pine lumber from Boyd, Ala., to Buffalo, N. Y., reconsigned to Camden, N. J. *B. K. Fisk* for complainant. *L. P. Day* and *B. J. Torbron* for defendants. Dismissed on request of complainant, February 13, 1922.

12822. WEST ALABAMA LUMBER CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on one carload of yellow pine lumber from York, Ala., to Buffalo, N. Y., reconsigned to Chester, Pa. *B. K. Fisk* for complainant. *L. P. Day* and *B. J. Torbron* for defendants. Dismissed on request of complainant, February 13, 1922.

12826. GRASSELLI CHEMICAL CO. v. DIRECTOR GENERAL, AS AGENT, ET AL. Rates on roasted zinc ore, carloads, from Gibson, Ind., to Clarksburg, W. Va. *W. T. Cashman* and *M. H. Miller* for complainant. *C. Brown* and *J. F. Finerty* for defendants. Dismissed on request of complainant, March 13, 1922.

12849. GREAT WESTERN PAPER CO. v. M., ST. P. & S. S. M. RY. CO. ET AL. Rates on scrap paper, carloads, from St. Louis, Mo., to Ladysmith, Wis. *O. J. Carlson* for complainant. *N. S. Brown* and *A. H. Lossow* for defendants. Transferred to Special Docket for adjustment, February 13, 1922.

12947. FLORIDA CITRUS EXCHANGE v. DIRECTOR GENERAL, AS AGENT, ET AL. Loss and damage claims relating to shipments of citrus fruits from points in Florida. *Scarlett & Jordan* for complainant. No appearances for defendants. Dismissed on request of complainant January 10, 1922.

12980. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL, AS AGENT.* Rates on logs from points in Michigan to Greyling, Mich. *A. S. Farrow* and *C. M. Spargo* for complainant. *L. P. Day* for defendants. Complaint satisfied. Dismissed March 13, 1922.

12989. *BARNETT-FISCHER COAL & MINING Co. v. M. & E. R. R. Co. ET AL.* Rates on coal from Illinois mines to Dupo, Ill., reconsigned to Moberly, Mo., and again reconsigned to Minneapolis or St. Paul, Minn. *G. B. Webster* for complainant. *H. G. Herbel* and *C. C. P. Rausch* for defendants. Dismissed on request of complainant, January 10, 1922.

12992. *CORBETT HARDWARE CO. ET AL. v. DIRECTOR GENERAL, AS AGENT.* Rates on various commodities from Phoenix, Ariz., to Tucson, Ariz. *T. E. Smith* and *F. H. Sienenson* for complainants. *R. Johnston* for intervener. *G. P. Bullard* and *F. B. Austin* for defendants. Dismissed on request of complainant, February 13, 1922.

13003. *LOEWENTHAL CO. ET AL. v. C., M. & ST. P. RY. CO. ET AL.* Rates on copper ingots from points in Michigan to St. Louis, Mo., St. Paul, Minn., Davenport, Iowa, and points in Illinois and Wisconsin. *J. E. Hart* for complainants. *A. F. Cleveland* and *R. H. Widdicombe* for defendants. Dismissed on request of complainants, February 13, 1922.

13038. *ITALIAN GOVERNMENT COMMISSION v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on steel billets carloads, from Laughlin, Ohio, to Port Arthur, Tex., for export. *F. W. Knoche* for complainant. *G. H. Muckley* for defendants. Transferred to Special Docket for adjustment, January 3, 1922.

13057. *GROWERS RICE MILLING Co. v. DIRECTOR GENERAL, AS AGENT.* Rates on various commodities between South San Francisco, Calif., and San Francisco, Calif. *E. W. Hollingsworth* for complainant. *C. D. Mahaffie* and *E. Westlake* for defendants. Dismissed on request of complainant, February 13, 1922.

13058. *CRUCIBLE STEEL CO. OF AMERICA v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on scrap steel, carloads, from Auburn, Pa., to Harrison, N. J. *G. E. Walker* for complainants. *H. W. Bikle* for defendant. Transferred to Special Docket for adjustment, February 20, 1922.

13075. *INDIAHOMA REFINING Co. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rate on second-hand knock-down steel plate tank material, carloads, from Bristow, Okla., to Ranger, Tex. *W. M. Powers* for complainant. *M. G. Roberts* and *J. F. Finerty* for defendants. Dismissed on request of complainant, January 10, 1922.

13088. *WHITE STAR REFINING Co. v. DIRECTOR GENERAL, AS AGENT.* Rate on one empty tank car from Tulsa, Okla., to Springfield, Mo., and from Springfield, Mo., to Tulsa, Okla. *F. B. Dow* for complainant. *J. F. Finerty* for defendant. Complaint satisfied. Dismissed February 13, 1922.

13090. *INTERNATIONAL STEEL CORP. v. P. & R. RY. Co.* Storage charges on steel billets at Philadelphia, Pa. *M. A. Phillips* for complainant. *J. B. Gest* for defendant. Dismissed on request of complainant, February 13, 1922.

13093. *REED v. DIRECTOR GENERAL, AS AGENT.* Rates on one carload of cedar fence posts from Elgin, Tex., to Rocky Ford, Colo. *J. J. Atkinson* for complainant. *W. R. Smith* for defendant. Complaint satisfied. Dismissed February 13, 1922.

13126. *DUNBAR MOLASSES & SYRUP Co. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rental charges on tank cars. *B. Benedict* for complainant. *F. H. Wood* and *J. F. Finerty* for defendants. Dismissed on request of complainant, January 10, 1922.

13127. *GASTON, WILLIAMS & WIGMORE, INC., v. DIRECTOR GENERAL, AS AGENT.* Rates on imported marmot skins from Tacoma, Wash., to New York, N. Y.

*H. S. Elkins* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, January 10, 1922.

13130 *VILLA & BROS., INC., v. DIRECTOR GENERAL, AS AGENT*. Rates on imported raw silk from San Francisco, Calif., to New York, N. Y. *S. J. Klein*, for complainant. *T. M. Woodward* for defendant. Dismissed on request of complainant, March 13, 1922.

13131. *NORTH STAR OIL & REFINING CO. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on petroleum and its products from Greybull, Wyo., to Calgary and Lethbridge, Alberta. *C. D. Chamberlin* for complainant. *J. F. Finerty, F. G. Dorety, R. J. Hagman* and *K. F. Burgess* for defendants. Complaint satisfied. Dismissed February 13, 1922.

13134. *INTERNATIONAL HARVESTER CO. ET AL. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on agricultural implement repair parts, binder twine, engines and tractors from various points in United States to points in Canada. *C. H. Browder* for complainants. *E. P. Flintoft, O. W. Dynes, J. N. Davis, F. G. Dorety, R. J. Hagman, A. Fraser, A. B. Enoch, J. F. Finerty, Winston, Straon & Shaw, G. M. B. Lowes, R. H. Widdicombe* and *A. H. Losso* for defendants. Dismissed on request of complainants, January 10, 1922.

13140. *STANDARD SHIPBUILDING CORP. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on iron chain, steel plates, iron bars, etc., from Hoquelage, Quebec, Canada, and Braddock Place, Harrisburg and Lebanon, Pa., to Shooters Island, N. Y. *Larkin, Rathbone & Perry* for complainant. *J. F. Finerty* for defendants. Dismissed on request of complainant, February 13, 1922.

13142. *MISSOURI PORTLAND CEMENT CO. v. C., C. & ST. L. RY. CO. ET AL.* Rates on cement from Prospect Hill, St. Louis, Mo., to points in Illinois. *T. L. Phillips* and *T. C. Taylor* for complainant. *F. Willeke* for intervener. *D. P. Connell* for defendants. Dismissed on request of complainant, March 13, 1922.

13143. *NEW YORK STATE HAY & GRAIN DEALERS' ASSO. v. DIRECTOR GENERAL, AS AGENT*. Car fitting for shipments of grain from various points in the State of New York. *D. J. Sims* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, February 13, 1922.

13144. *GILL & SONS v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on grapes, carloads, from Hammondsport, N. Y., to Newark, N. J. No appearances for complainant. *C. D. Mahaffie* for defendant. Transferred to Special Docket for adjustment, January 30, 1922.

13160. *NEW YORK STATE HAY & GRAIN DEALERS' ASSO. v. DIRECTOR GENERAL, AS AGENT*. Rates on various commodities from points in New York to points in c. f. a. territory. *D. J. Sims* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, February 13, 1922.

13166. *NORTHWESTERN TRAFFIC & SERVICE BUREAU, INC., v. O. & A. R. R. CO. ET AL.* Rate on one carload of coke from Wood River, Ill., to Akron, Iowa. *S. B. Houck* and *C. B. Hill* for complainant. *J. T. Averitt* for defendant. Complaint satisfied. Dismissed March 13, 1922.

13175. *HEYWOOD-WAKEFIELD CO. v. C., C. & ST. L. RY. CO. ET AL.* Rates on school chairs with table attachments, detached, from Louisville, Ky., to San Francisco, Calif. *D. T. Berry* for complainant. *T. J. Norton, F. E. Andrews*, and *C. Brown* for defendants. Dismissed on request of complainant, January 10, 1922.

13186. *LIPE CO. v. DIRECTOR GENERAL, AS AGENT*. Erroneous routing of two carloads of oats from Pekin, Ill., to Yonkers, N. Y., to be accorded transit privileges at Bryan, Ohio. *L. J. Schuster* for complainant. *L. P. Day* and *R. D. Hunter* for defendants. Dismissed on request of complainant, March 13, 1922.

13191. *VIM MOTOR TRUCK CO. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Demurrage charges on freight motor trucks at Savannah, Ga. *G. J. Edwards, Jr.* for complainant. *R. McKenna* for defendants. Dismissed on request of complainant, February 13, 1922.

13197. *STRONG & TROWBRIDGE CO. v. DIRECTOR GENERAL, AS AGENT.* Rates on galvanized wire from Woodlawn, Pa., to Laredo, Mo., rebilled from Kansas City, Mo., to San Francisco, Calif., for export. *W. R. Strickland* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, March 13, 1922.

13202. *WILSON & CO. v. DIRECTOR GENERAL, AS AGENT.* Rates on inedible tallow, carload, from Oklahoma City, Okla., to Key West, Fla., for export. *N. D. Belnap* for complainant. *R. McKenna* for defendants. Dismissed on request of complainant, March 13, 1922.

13210. *STATE HIGHWAY DEPARTMENT OF TEXAS v. DIRECTOR GENERAL, AS AGENT.* Rates on one carload of motor truck chassis parts from Detroit, Mich. to Austin, Tex. *J. J. Atkinson* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, January 10, 1922.

13216. *EAST ST. LOUIS STONE CO. v. T. R. R. ASSO. OF ST. LOUIS ET AL.* Rates on various commodities from and to Falling Springs, Ill., and St. Louis, Mo. *W. E. Rosenbaum* for complainant. *E. C. Kramer* for defendants. Dismissed on request of complainant, February 13, 1922.

13235. *PORTLAND TRAFFIC & TRANSPORTATION ASSO. ET AL. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on one carload of canned corn from Hartland, Me., to Portland, Oreg. *W. C. McCulloch* and *J. H. Lathrop* for complainants. *W. A. Robbins* for defendants. Dismissed on request of complainants, March 13, 1922.

13244. *DEE CLAY MFG. CO. ET AL. v. B. & O. R. R. CO. ET AL.* Minimum weight on flue linings shipped from Mecca and Newport, Ind., to points in Illinois, Indiana, Michigan, Ohio, Wisconsin, and Minnesota. *C. W. Edmondson* for complainants. *F. H. Cull* for intervener. *E. P. Vernia*, *K. L. Richmond*, *R. H. Widdicombe*, *J. Stillwell*, *C. Brown*, *O. W. Dynes*, *J. N. Davis*, *N. S. Brown*, and *A. P. Humburg* for defendants. Dismissed on request of complainant, February 13, 1922.

13264. *PRODUCERS REFINING CO. v. FT. W. & D. C. RY. CO. ET AL.* Rates on gas oil from Gainesville, Tex., to Denver and Pueblo, Colo. *A. C. Holmes* for complainant. *E. E. Whitted*, *J. Q. Dier*, *Thompson*, *Barwise*, *Wharton* & *Himer*, *T. J. Norton*, *F. E. Andrews*, and *C. S. Burg* for defendants. Complaint satisfied. Dismissed February 13, 1922.

13269. *NORTHWESTERN TRAFFIC & SERVICE BUREAU v. C., B. & Q. R. R. CO. ET AL.* Rates on one carload of soft coal from Alger, Wyo., to Grand Junction, Iowa. *S. B. Houck* for complainant. *M. M. Joyce*, *D. Evans*, *R. H. Widdicombe*, and *K. F. Burgess* for defendants. Complaint satisfied. Dismissed February 13, 1922.

13270. *COTTRELL LUMBER CO. v. DIRECTOR GENERAL, AS AGENT, ET AL.* Rates on wooden poles too long to be loaded in a single car, from Bedford, Pa., to Wilkesburg, Pa. *W. J. Herman* for complainant. *H. W. Biele* and *J. F. Finerty* for defendants. Dismissed on request of complainant, March 13, 1922.

13275. *CHANDLER CO. v. DIRECTOR GENERAL, AS AGENT.* Rates on grapes in carloads, packed in lug boxes, from points in California to Scranton, Pa., territory. *C. A. Rogers* for complainant. *C. A. Rogers* for intervener. *J. F. Finerty* for defendant. Dismissed on request of complainant, March 13, 1922.

13303. *COHEN & SON v. P. R. R. CO. ET AL.* Rates on second-hand railway track rails from Carney's Point, N. J., to Wilkes-Barre and Scranton, Pa.

*C. A. Rogers* for complainant. *H. W. Bikle* for defendant. Dismissed on request of complainant, March 13, 1922.

13307. NATIONAL SUPPLY CO. OF TEXAS *v.* DIRECTOR GENERAL, AS AGENT. Rate on one carload of oil-well supplies from Swissvale, Pa., to Fort Worth, Tex. *J. F. Ryan* for complainant. *J. F. Finerty* for defendant. Dismissed on request of complainant, March 13, 1922.

13392. WICHITA BOARD OF COMMERCE *v.* C., R. I. & G. RY. CO. ET AL. Rates on grain and products from points in Kansas and Oklahoma to Galveston and Texas City, Tex., for export. *W. P. Huston* for complainant. *M. G. Roberts, T. J. Norton, F. E. Andrews, A. B. Enoch, and Dabney & King* for defendants. Dismissed on request of complainant, February 13, 1922.

13416. WICHITA BOARD OF COMMERCE *v.* A., T. & S. F. RY. CO. ET AL. Rates on live stock from points in Colorado to Wichita, Kans. *W. P. Huston* for complainant. *J. H. Tedrow and L. E. Greene* for interveners. *A. B. Enoch, T. J. Norton, F. E. Andrews, H. A. Scandrett, J. M. Souby, H. G. Herbel, and J. M. Chaney* for defendants. Dismissed on request of complainant, March 13, 1922.

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## REPARATION GRANTED UNDER SUPPLEMENTAL ORDERS OF THE COMMISSION DURING TIME COVERED BY THIS VOLUME.

7714 and 7714 (Sub-Nos. 1 to 6). *HAGENBURG v. BELT RY. Co.* January 10, 1922. Reparation for \$2,172.88, on shipments of salted hides, pelts, hide trimmings and tallow from points in Minnesota, Iowa, and Missouri to Chicago, Ill., on account of unreasonable rates.

8406 (Sub Nos. 8, 9, 10, 11, 12, 20, 21, 22, and 23). *NATIONAL TUBE Co. v. L. T. R. R. Co.* January 10, 1922. Reparation for \$220,496.36, on shipments between points on the Lake Terminal Railroad and interstate points, on account of unreasonable and prejudicial charges.

8632 (Sub-Nos. 1 and 2). *SULZBERGER & SONS Co. v. M., K. & T. RY. Co.* January 10, 1922. Reparation for \$309.50, on shipments of fresh meat from Kansas City, Kans., to Oklahoma City, Okla., on account of unreasonable rates.

8793. *WEST COAST LUMBERMEN'S ASSO. v. DIRECTOR GENERAL.* February 13, 1922. Reparation for \$889.59, on shipments of shingles from Washington and Oregon to Illinois, Indiana, Michigan, Missouri, Wisconsin, and Iowa, on account of unreasonable rates.

10228. *LION COAL Co. v. UTAH RY. Co.* February 13, 1922. Reparation for \$9,661, on shipments of coal from complainant's mine to intrastate and interstate destinations, on account of unreasonable charges.

10287. *GLOBE ELEVATOR Co. v. DIRECTOR GENERAL.* February 13, 1922. Reparation for \$2,123.90, on switching shipments of grain at Buffalo, N. Y., on account of unreasonable and prejudicial charges.

10459. *DU PONT DE NEMOURS & Co. v. DIRECTOR GENERAL.* January 10, 1922. Reparation for \$460.19, on shipments of soda ash from Newark, N. J., to Hopewell, Va., on account of misrouting and illegal charges.

104272. *AETNA EXPLOSIVES Co. v. DIRECTOR GENERAL.* January 10, 1922. Reparation for \$310.34, on shipments of explosives from Fayville, Ill., to Flat River, Mo., on account of unreasonable rates.

11007 and 11007 (Sub-No. 1). *GLOBE OIL MILLS v. DIRECTOR GENERAL.* February 13, 1922. Reparation for \$6,836.34, on shipments of soya-bean oil from Los Angeles, Calif., to Ivorydale, Ohio, Chicago, Ill., and New Orleans, La., on account of unreasonable rates.

11168. *NAGASE & Co. v. DIRECTOR GENERAL.* February 13, 1922. Reparation for \$3,966.38, on shipments of potato starch from Seattle, Wash., to Chicago, Ill., and New York, N. Y., on account of unreasonable rates.

11209. *PEERLESS PORTLAND CEMENT Co. v. DIRECTOR GENERAL.* January 10, 1922. Reparation for \$16,770, on shipments of marl from Spring Arbor to Union City, Mich., on account of unreasonable rates.

11211. *HAWKINS v. O. S. L. R. R. Co.* January 10, 1922. Reparation for \$20.43, on shipment of bags from San Francisco, Calif., to Rupert, Idaho, on account of unreasonable rates.

11219. *SINCLAIR REFINING Co. v. DIRECTOR GENERAL.* February 13, 1922. Reparation for \$4,828.78, on shipments of acid from Arkansas City, Eldorado, Augusta, and Wichita, Kans., to Coffeyville, Kans., on account of unreasonable rates.

11238. BUXTON-SMITH Co. v. DIRECTOR GENERAL. February 13, 1922. Reparation for \$3,077.49, on shipments of fruits and vegetables from points in California to Bisbee and Douglas, Ariz., on account of unreasonable rates.

11343. ODELL-DALEY MATERIAL Co. v. DIRECTOR GENERAL. January 10, 1922. Reparation for \$1,799.22, on shipments of sand from Guion, Ark., to Augusta, Kans., on account of unreasonable rates.

11348. EMPIRE COTTON OIL Co. v. DIRECTOR GENERAL. January 10, 1922. Reparation for \$329.22, on shipments of cotton seed from Florida to Cordele, Ga., on account of unreasonable rates.

11353. PHOENIX TRAFFIC BUREAU v. S. P. Co. January 10, 1922. Reparation for \$157.73, on shipments of apples from Watsonville, Calif., to Phoenix, Ariz., on account of unreasonable rates.

11389. KELSEY WHEEL Co. v. Y. & M. V. R. R. Co. January 10, 1922. Reparation for \$2,969.95, on shipments of spokes from Goodman, Bentonla, Yazoo City, and Valley, Miss., to Memphis, Tenn., on account of unreasonable rates.

11482. WERNER STAVE Co. v. DIRECTOR GENERAL. February 13, 1922. Reparation for \$806.79, on shipments of staves from Texas City, Tex., to New Orleans, La., on account of unreasonable rates.

11507. TEXAS Co. v. DIRECTOR GENERAL. February 13, 1922. Reparation for \$1,997.60, on shipments of oil and wax from Port Arthur to Galveston, Tex., on account of unreasonable rates.

11568. SWIFT & Co. v. DIRECTOR GENERAL. February 13, 1922. Reparation for \$8,674.21, on shipments of phosphate rock from Alafia, Fla., to Agricola, Fla., on account of unreasonable charges.

11650. TEXARKANA PIPE WORKS v. DIRECTOR GENERAL. January 10, 1922. Reparation for \$714, on shipments of clay from Post Pipe Spur, Ark., to Texarkana, Tex., on account of unreasonable charges.

11698. PARLOR CITY LUMBER Co. v. DIRECTOR GENERAL. January 10, 1922. Reparation for \$21.22, on shipment of wall board from Greenville, Miss., to Monroe, La., on account of unreasonable rates.

11765. KAUFMAN & SONS Co. v. DIRECTOR GENERAL. January 10, 1922. Reparation for \$807.42, on shipments of scrap iron from Ernston, N. J., to Bayway and Elizabethport, N. J., on account of unreasonable rates.

11795. ARMOUR & Co. v. DIRECTOR GENERAL. January 10, 1922. Reparation for \$307.60, on shipments of salt from Marine City, Ludington, and Port Huron, Mich., to Chicago, Ill., on account of unreasonable charges.

NOTE.—The amount of reparation awarded in the above cases aggregates \$290,508.14.

## TABLE OF COMMODITIES.

[Numbers in parentheses after citations indicate where commodity is considered.]

- ACID.** Hillsboro, Ill., to Cincinnati, Ohio, and Evansville and Jeffersonville, Ind., 383.
- ACID, MIXED.** Arlington, N. J., from Hopatcong and Haskell, N. J., 291.
- ACID, NITRATING.** Arlington, N. J., from Hopatcong and Haskell, N. J., 291.
- ACID, SULPHURIC:**  
Charlotte, N. C., to Greensboro, N. C., and Columbia, S. C., 277.  
Hillsboro, Ill., to Cincinnati, Ohio, and Evansville and Jeffersonville, Ind., 383.
- AUTOMOBILE JACKS.** See JACKS, AUTOMOBILE.
- BAGS, PAPER.** Wisconsin, Minnesota, and Michigan to various destinations, 571.
- BAGS, PAPER, PRINTED.** Wisconsin, Minnesota, and Michigan to various destinations, 571.
- BARLEY.** Arkansas from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill., 475.
- BARRELL MATERIAL.** Penalty charge, 393.
- BEEF, FRESH, FROZEN.** Columbus, Ohio, to New York, N. Y., 65.
- BILLETS, HARDWOOD.** Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio to central territory and other defined territories, 68.
- BLANKS, PAPER ORDER, PRINTED.** Wisconsin, Minnesota, and Michigan to various destinations, 571.
- BOARD, BINDER.** Wisconsin, Minnesota, and Michigan to various destinations, 571.
- BOARD, BOX.** Hartford City, Ind., to Fort Wayne, Ind., 669.
- BOLTS, HARDWOOD.** Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio to central and other defined territories, 68.
- BOWLERS, AGATE.** Montana to San Francisco, Calif., 674.
- BOXES, FIELD, EMPTY RETURNED.** Tavares, Fla., to Altoona, Orange Bend, Sorrento, and Paola, Fla., 307.
- BOXES, PAPER:**  
Indiana to St. Paul and Minneapolis, Minn., 512.  
Wisconsin, Minnesota, and Michigan to various destinations, 571.
- BOXES, PULPBOARD.** Wisconsin, Minnesota, and Michigan, to various destinations, 571.
- BOXES, STRAWBOARD.** Wisconsin, Minnesota, and Michigan to various destinations, 571.
- BOX MATERIAL.** Penalty charge, 393.
- BRICK.** Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (190).
- BRICK, FIRE.** San Francisco, Oakland, Emeryville, Pittsburg, and Anderson, Calif., from transcontinental groups, A, D, E, and J, 169.
- CABBAGE.** Coleman, Fla., to Providence, R. I., 300.

**CAKE, COTTONSEED:**

Missouri, Arkansas, Louisiana, Oklahoma, and Texas to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory, 640.

Savannah, Ga., to Alexandria, Va., 650.

**CAKE, VEGETABLE.** Missouri, Arkansas, Louisiana, Oklahoma, and Texas to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory, 640.

**CARDBOARD.** Wisconsin, Minnesota, and Michigan to various destinations, 571.

**CARTONS, PULPBOARD AND STRAWBOARD.** Wisconsin, Minnesota, and Michigan to various destinations, 571.

**CASING, OIL WELL, SECONDHAND.** Howard, Kans., to Anadarko, Okla., 308.

**CATTLE.** Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (191).

**CEMENT:**

Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (188).

Kansas gas belt and Dewey, Okla., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming, 495.

**CHIPBOARD.** Hutchinson, Kans., to Oklahoma City, Okla., 571 (585).

**CLASS AND COMMODITY RATES:**

Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179.

Indiana to St. Paul and Minneapolis, Minn., 512.

Natchez and Vicksburg, Miss., to and from Louisiana, 386.

Woodbury, N. J., to and from various points, 490.

**CLASS RATES:**

Bay Ridge, Bath Junction, Parkville, Vanderveer Park, and East New York, N. Y., to and from points on the New York, New Haven & Hartford R. R., 347.

Corinth, Miss., to Tennessee, 820.

Indianapolis, Ind., to Ohio. Cancellation of joint rates, 449.

La Crosse, Wis., to New England, trunk line, and central territories, 371.

Mississippi River crossings to and from Mason City, Iowa, on traffic originating at or destined to official territory. Proportional rates, 619.

**COAL:**

Colorado, Wyoming, Kansas, and Arkansas to Iowa and Nebraska, 145.

Dawson, N. Mex., to Clarkdale and Jerome, Ariz., 377.

Kansas City, Mo.-Kans., from Springfield, Ill., district, and Missouri, Kansas, Oklahoma, and Arkansas mines, 457.

Kentucky mines to Festus and Crystal City, Mo., via Thebes, Ill., 228.

Roundup and Geneva, Mont., to North Dakota, South Dakota, and Minnesota, 249.

Tennessee and Kentucky mines to Nashville and Clarksville, Tenn., 529.

Western Maryland Ry. points to eastern destinations via Cumberland, Md., 108.

Williams, Okla., to Kansas City, Mo., 588.

Woodbury, N. J., from Maryland and Pennsylvania mines, 490.

**COAL, ANTHRACITE.** Pennsylvania mines to Rumford and South Brewer, Me., 159.

**COAL, BARLEY.** Pennsylvania mines to Rumford and South Brewer, Me., 159.

**COAL, BITUMINOUS:**

Chicago, Ill., from Indiana and Illinois, 671.

Citizens mines A and B, Springfield district, Ill., to Illinois, Indiana, Iowa, and Missouri, 271.

Clinton and Brazil districts, Ind., to Clinton, Locan, Mount Silica, and Brazil, Ind., 338.

Hood mine, South Rivesville, W. Va., to Cocheton, Hancock, and Olean, N. Y., and Garfield, N. J., 293.

Kettle Valley, Fayette, Lenoir, and Essanbee, Ind., to Chicago, Ill., 560.

Linton group, Ind., to Anderson, Eaton, Marlon, Lawrence, New Castle, Daleville, Alexandria, Muncie, Elwood, Springport, Tipton, Winchester, and Fort Benjamin Harrison, Ind., 157.

Nevada from Castle Gate district, Utah, and Rock Springs, Wyo., 216.

Pennsylvania mines and Fairmont, W. Va., to Rumford and South Brewer, Me., 159.

Peoria, Ill., from Springfield district, and Peoria county and Fulton county groups, Ill., 624.

**COAL, BUCKWHEAT.** Pennsylvania mines to Rumford and South Brewer, Me., 159.

**COAL, FINE.** Kansas City, Mo.-Kans., from Springfield, Ill., district, and Missouri, Kansas, Oklahoma, and Arkansas mines, 457.

**COAL, GRATE.** Colorado, Wyoming, Kansas, and Arkansas to Iowa and Nebraska, 145.

**COAL, LUMP:**

Colorado, Wyoming, Kansas, and Arkansas to Iowa and Nebraska, 145.

Hillsboro, Ill., to Elroy, Wis., reconsigned to Wausau, Wis., 469.

Kansas City, Mo.-Kans., from Springfield, Ill., district, and Missouri, Kansas, Oklahoma, and Arkansas mines, 457.

Nevada from Castle Gate district, Utah, and Rock Springs, Wyo., 216.

**COAL, NUT:**

Colorado, Wyoming, Kansas, and Arkansas to Iowa and Nebraska, 145.

Nevada from Castle Gate district, Utah, and Rock Springs, Wyo., 216.

**COAL, RUN-OF-MINE:**

Clinton and Brazil districts, Ind., to Clinton, Locan, Mount Silica, and Brazil, Ind., 338.

Nevada from Castle Gate district, Utah, and Rock Springs, Wyo., 216.

Sunnyside, Utah, to Boise, Idaho, 607.

**COAL, SLACK:**

Colorado, Wyoming, Kansas, and Arkansas to Iowa and Nebraska, 145.

Kansas City, Mo.-Kans., from Springfield, Ill., district, and Missouri, Kansas, Oklahoma, and Arkansas mines, 457.

Nevada from Castle Gate district, Utah, and Rock Springs, Wyo., 216.

**COAL, SMITHING:**

Douglas, W. Va., to Burlington, Clarinda, and Red Oak, Iowa, Broken Bow, Nebr., and La Crosse, Wis., 129.

Pennsylvania and West Virginia to St. Louis, Mo., there sacked and forwarded to western trunk lines trans-Missouri, and southwestern lines territories, 147.

**COFFEE, GREEN.** New Orleans, La., to Jackson, Miss., 389.

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**COKE:**

Jamison, Pa., to Oskaloosa, Iowa, and Sheridan, Wyo., 129.

St. Paul, Minn., to Michigan, Wisconsin, Illinois, Iowa, Missouri, North Dakota, South Dakota, Kansas, and Nebraska, 480.

Terre Haute, Ind., to Adams, Nebr., and Fontanelle and Coburg, Iowa, 604.

**CONCENTRATES.** Burke. Idaho, to Wallace, Idaho, 140.

**COPPER, BLISTER.** Port Colborne, Ont., to Constable Hook and Chrome, N. J., 627.

**COBES, PRINTER'S ROLLER.** Official and western classification territories. Rating, 657.

**CORK, GROUND.** Beaver Falls, Pa., to Tallulah, La., 755.

**CORN:**

Arkansas from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill., 475.

Memphis, Tenn., from Ashland, Lexington, Cleemoor, McLean, Rutland, Stanford, and Wenona, Ill., 265.

North Dakota from Iowa and South Dakota, 126.

**COTTON:**

Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (187).

New Orleans, La. "Space rental" charges on domestic, export, and coast-wise shipments, 121.

**COTTONSEED PRODUCTS.** Missouri, Arkansas, Louisiana, Oklahoma, and Texas to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory, 640.

**CRATE MATERIAL.** Penalty charge, 393.

**DISTILLATES, PETROLEUM:**

Shamrock, Okla., to and from Tulsa, Okla., 113.

Texas to Minneapolis and Willmar, Minn., 426 (440).

**ENGINES, GAS.** Leonard, Okla., to Shamrock, Okla., 113.

**FARM PRODUCTS.** Murphy and Wilder branches of the Oregon Short Line to and from various points, 330.

**FELDSPAR.** Wilmington, Del., to Parkersburg, W. Va., 681.

**FERTILIZER:**

Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (186).

Cleveland, Ohio, to Minford, Ohio, 615.

**FERTILIZER MATERIAL.** Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (186).

**FLOUR:**

Buhler, Kans., to Missouri and states east thereof, 613.

Texas differential territory, 4.

**FLOUR, SELF-RISING COMPOUND.** Cortland, N. Y., to official territory, 309.

**FOREST PRODUCTS:**

Hawley and Truckee groups, Calif., and Nev., to interstate destinations, 56.

Memphis, Tenn., and Louisville, Ky. Milling-in-transit, 67.

Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio to central territory and other defined territories, 68.

Penalty charge, 393.

**FORGINGS, STEEL.** Portland, Oreg., and Tacoma, Wash., from Camden, N. J., Buffalo, N. Y., Titusville and Nicetown, Pa., and Gary, Ind., 633.

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**FRUIT, CITRUS.** Altoona, Orange Bend, Sorrento, and Paola, Fla., to Tavares, Fla., for packing and reshipment, 307.

**FRUIT, DRIED.** Tacoma, Wash., from Fresno, Letans, Fowler, Selma, and Dinuba, Calif., 679.

**FRUITS.** New Jersey terminals to Duane Street, New York, N. Y., 195.

**FULLER'S EARTH.** Oklahoma City, Okla., from Midway, Quincy, and Eilenton, Fla., 562.

**FURNITURE.** Indiana to St. Paul and Minneapolis, Minn., 512.

## GASOLINE:

Bryanmound, Tex., to Birmingham, Ala., 601.

Greybull, Wyo., to Klamath Falls, Oreg., 472.

Mereaux and North Baton Rouge, La., to Birmingham and Alabama City, Ala., 509.

North Baton Rouge, La., to Carbon Hill and Guin, Ala., 274.

Salt Lake City, Ogden, and Provo, Utah, from California, Colorado, Kansas, Missouri, Oklahoma, and Wyoming, 8.

Shamrock, Okla., to and from Tulsa, Okla., 113.

Texas and Oklahoma to Brawley and Calipatria, Calif., 472.

Track storage charges on private tracks, 53.

Wood River and East St. Louis, Ill., Louisville, Ky., Baton Rouge, La., Savannah, Ga., and Jacksonville and Port Tampa, Fla., to Kentucky, Mississippi, Alabama, Georgia, and Florida, 37.

**GASOLINE, ABSORPTION.** Independence, Kans., from Big Heart and Turley, Okla., 611.

**GASOLINE, CASINGHEAD.** Track storage charges on private tracks, 53 (61).

**GLASS, WINDOW.** Sioux Falls, S. Dak., from Kansas and Oklahoma, 757.

**GLASSES, JELLY.** Muncie, Ind., to Wisconsin and Minnesota, 533.

## GRAIN:

Arkansas from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill., 475.

Memphis, Tenn., to Carolina territory, originating in Arkansas, Oklahoma, Texas, and Louisiana, 19.

Murphy and Wilder branches of the Oregon Short Line to and from various points, 330.

New England. Reconsignment, 142.

Oakland, Calif., to and from California, 593.

Ohio and Mississippi river crossings to Carolina and Atlanta territories, 19.

Oklahoma and Kansas to Buhler, Kans., milled and the products shipped to Missouri and states east thereof, 613.

## GRAIN PRODUCTS:

Arkansas from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill., 475.

Buhler, Kans., to Missouri and states east thereof, 613.

Memphis, Tenn., to Carolina territory, originating in Arkansas, Oklahoma, Texas, and Louisiana, 19.

Oakland, Calif., to and from California, 593.

Ohio and Mississippi river crossings to Carolina and Atlanta territories, 19.

**GRAINS, COARSE.** Arkansas from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill., 475.

**HANDLES, MOR.** Chicago, Ill., to Pacific coast terminals, 205.

## HAY:

Murphy and Wilder branches of the Oregon Short Line to and from various points, 330.

Townley, N. J. Demurrage, 549.

- HIDES, GREEN SALTED.** Denver, Colo., to St. Joseph, Mo., and Chicago, Ill., 33.
- HIPOLITE.** Classification ratings, 666.
- HOGS.** Oklahoma City, Okla., from St. Joseph, Mo., and Kansas City, Mo. Kans., 282.
- HORSES.** Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (191).
- IMPLEMENTS, AGRICULTURAL.** Indiana to St. Paul and Minneapolis, Minn., 512.
- INFLAMMABLE ARTICLES.** Track storage charges on private tracks, 58.
- IRON ARTICLES:**
- Beaumont, Tex., to Louisiana, 544.
  - Boston, Gloucester, Worcester, Fitchburg, and Clinton, Mass., to Maine Central R. R. points, 100.
- IRON, BAND.** Indiana to St. Paul and Minneapolis, Minn., 512.
- IRON, BAR:**
- Indiana to St. Paul and Minneapolis, Minn., 512.
  - Terre Haute, Ind., to Seattle, Wash., for export, 269.
- IRON, BOILER.** Indiana to St. Paul and Minneapolis, Minn., 512.
- IRON, PIG.** Pottstown, Pa., to San Francisco, Calif., for export, 261.
- IRON, ROD.** Indiana to St. Paul and Minneapolis, Minn., 512.
- IRON, SCRAP.** Cincinnati, Ohio, to and from Andrews, Ky., 279.
- JACKS, AUTOMOBILE.** Ashland, Ohio, and Joliet, Ill., to Oakland, (Melrose), Calif., 677.
- JARS, GLASS FRUIT:**
- Indiana to St. Paul and Minneapolis, Minn., 512.
  - Muncie, Ind., to Wisconsin and Minnesota, 523.
- KAPOK, IMPORTED.** San Francisco, Calif., to Chicago, Ill., New York, N. Y. and Boston, Mass., 663.
- KEROSENE.** Independence, Kans., to Sheffield, Iowa, reconsigned to Minneapolis, Minn., 313.
- LIME.** Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (194).
- LININGS, PAPER, ICE-CREAM CAN.** Wisconsin, Minnesota, and Michigan to various destinations, 571.
- LINTERS, COTTON.** New Orleans, La. "Space rental" charges on domestic export, and coastwise shipments, 121.
- LIVERS, BEEF, FROZEN.** Jersey City, N. J. (Float bridge to Pier A), 760.
- LIVE STOCK:**
- Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (189).
  - Chicago, Ill., South San Francisco, Calif., Andalusia, Ala., Moultrie, Ga., St. Louis, Mo., North Portland, Oreg., Somerville, East Cambridge, Brightwood, and Worcester, Mass., and New Haven, Conn. Loading and unloading, 44.
  - Domestic bill of lading, 63.
  - Murphy and Wilder branches of the Oregon Short Line to and from various points, 330.
  - Wichita, Kans., from Gould and Hollis, Okla., and Dodsonville and Wellington, Tex., 591.
- LOGS, HARDWOOD.** Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio to central territory and other defined territories, 68.

**LUMBER:**

Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (190).

Burkburnett, Tex., to Bristow, Slick, and Commerce, Okla., 599.

Hawley and Truckee groups, Calif. and Nev., to interstate destinations, 56.

Lovelace, Ga., to Norfolk, Va., held at Portsmouth, Va. Demurrage, 241.

Memphis, Tenn., and Louisville, Ky. Milling-in-transit, 67.

Memphis, Tenn., or Louisville, Ky. Transit arrangements, 94.

Meridian, Miss., and Jackson and Chattanooga, Tenn. Demurrage and reconsignment charges, 687.

Newark, N. J. Milling-in-transit, 54.

Penalty charge, 398.

Portsmouth, Va. Demurrage, 241.

Preston and Logansport, La., to Eastland and Ranger, Tex., 297.

Timber, Oreg., to Cochise, Ariz., reconsigned to Globe, Ariz., 119.

Weed and Westwood, Calif., and Klamath Falls, Oreg., to Alford, Iowa,

Jasper, Marshall, Waverly, Litchfield, Pipestone, and Sank Center, Minn., and Garretson, S. Dak., 109.

Woodbury, N. J., from the South, 490.

**LUMBER, HARDWOOD:**

Alexandria, La., to California, Washington, Oregon, and British Columbia, 595.

Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio to central territory and other defined territories, 68.

**LUMBER, YELLOW-PINE.** Ranger, Tex., to Duncan, Tulsa, and Walters, Okla., 327.

**MACHINERY, DRILLING.** Haskell, Okla., to Shamrock, Okla., 113.

**MARSHMALLOW CREAM.** Classification ratings, 693.

**MATCHES.** Indiana to St. Paul and Minneapolis, Minn., 512.

**MEAL, COTTONSEED AND VEGETABLE.** Missouri, Arkansas, Louisiana, Oklahoma, and Texas to Mississippi and Ohio river cities, and points north and east thereof, and western trunk-line territory, 640.

**MEAT, FRESH.** Jersey City, N. J. Switching, 445.

**MOPS.** Chicago, Ill., to Pacific coast terminals, 235.

**MULES.** Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (191).

**NAILS:**

Beaver Falls, Pa., to Tallulah, La., 755.

Indiana to St. Paul and Minneapolis, Minn., 512.

**NAPETHA.** Shamrock, Okla., to and from Tulsa, Okla., 113.

**NAPKINS, PAPER.** Wisconsin, Minnesota, and Michigan to various destinations, 571.

**NAVAL STORES.** Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (193).

**OATS:**

Arkansas from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill., 475.

Memphis, Tenn., from Ashland, Lexington, Clemons, McLennan, Rutland, Stanford, and Wenona, Ill., 265.

North Dakota from Iowa and South Dakota, 126.

66 I. C. C.

**OIL, COTTONSEED.** Missouri, Arkansas, Louisiana, Oklahoma, and Texas to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory, 640.

**OIL, CREOSOTE.** Chicago, Ill., and St. Louis, Mo., to St. Paul and Duluth, Minn., 1.

**OIL, CREUDE.** Burkburnett and Ranger groups in Texas and from Shreveport, La., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory, 426.

**OIL, FUEL:**

Burkburnett and Ranger groups in Texas and from Shreveport, La., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory, 426.

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**OIL, GAS.** Burkburnett and Ranger groups in Texas and from Shreveport, La., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory, 426.

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- ROBIN. Alabama to and from Meridian, Miss., and Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., 179 (193).
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[Numbers in parentheses after citations indicate where locality is considered.]

- Aberdeen, S. Dak., from Minneapolis, Minn. Coal-tar pitch and coal tar, 505.  
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 Aberdeen, S. Dak., from St. Paul, Minn. Coke, 480.  
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 Adams, Nebr., from Terre Haute, Ind. Coke, 604.  
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 Alabama to Norfolk, Pig Point, Portsmouth, and Newport News, Va. Wooden paving-block material, 569.  
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 Albert Lea, Minn., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.  
 Albert Lea, Minn., from various points. Paper and paper articles, 571 (587).  
 Alexandria, Ind., from Linton group, Ind. Bituminous coal, 157.  
 Alexandria, Ind., to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.  
 Alexandria, La., to California, Washington, Oregon, and British Columbia. Hardwood lumber, 595.  
 Alexandria, La., to Mississippi and Ohio river cities, and points north and east thereof, and western trunk-line territory. Cottonseed cake and meal, 640 (646).  
 Alexandria, La., from various points. Paper and paper articles, 571 (587).  
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 Anderson, Ind., from Linton group, Ind. Bituminous coal, 157.  
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- Anniston, Ala. Switching, 255.
- Anse La Butte, La., to Chicago, Ill., St. Louis, Mo., and other points. Salt, 81.
- Apalachicola, Fla., to Mobile, Ala. Oyster shells, 763.
- Arkansas to Canada, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, and West Virginia via Memphis, Tenn., or Louisville, Ky. Lumber; transit arrangements, 94.
- Arkansas to Carolina territory via Memphis, Tenn. Grain and products, 19.
- Arkansas to central territory and other defined territorics. Hardwood lumber and forest products, 68.
- Arkansas from International Falls, Minn., Fort Frances and Sault Ste. Marie, Ont., and Fox River group, Wis. Paper and paper articles, 571.
- Arkansas to Iowa and Nebraska. Coal, 145.
- Arkansas to Kansas City, Mo.-Kans. Coal, 457.
- Arkansas to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed and vegetable cake, meal, and oil, 640.
- Arkansas from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Arkansas City, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Arlington, N. J., from Hopatcong and Haskell, N. J. Mixed or nitrating acid, 291.
- Ashland, Ill., to Memphis, Tenn. Corn and oats, 265.
- Ashland, Ohio, to Oakland (Melrose), Calif. Automobile jacks, 677.
- Ashland, Wis., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Ashland, Wis., from St. Paul, Minn. Coke, 480.
- Atlanta territory from Ohio and Mississippi river crossings. Grain and products, 19.
- Atlantic seaboard territory from Pacific coast ports. Pickled sheepskins, 415.
- Auburn, Ill., to Peoria, Ill. Bituminous coal, 624.
- Auburn, Me., from Boston, Gloucester, Worcester, Fitchburg, and Clinton, Mass. Iron and steel articles, 100.
- Auburn, Pa., to Rumford, Me. Anthracite coal, 159 (160).
- Austin, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Avery, La., to Chicago, Ill., St. Louis, Mo., and other points. Salt, 81.
- Baltimore, Md. Tack plate; demurrage, 661.
- Baltimore, Md., from Texas common points. Cottonseed oil, cake, and meal, 640.
- Baraboo, Wis., from St. Paul, Minn. Coke, 480.
- Batesville, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Bath Junction, N. Y., to and from New York, New Haven & Hartford R. R. points. Class rates, 347.
- Baton Rouge, La., to Kentucky, Mississippi, Alabama, Georgia, and Florida. Gasoline, refined oils, lubricating oils, and petroleum products, 37.
- Battle Mountain, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Bayonne, N. J., from Texas common points. Cottonseed oil, 640.
- Bay Ridge, N. Y., to and from New York, New Haven & Hartford R. R. points. Class rates, 347.
- Beaumont, Tex., to Louisiana. Iron and steel articles, 544.

- Beaver, Pa., to and from various points. Through routes and joint rates, 285.  
 Beaver Brook, Pa., to Rumford, Me. Anthracite coal, 159 (160).  
 Beaver Falls, Pa., to Tullulah, La. Cork waste, ground cork, and nails, 755.  
 Bellingham, Wash., from Kulshan, Wash. Fir piling; minimum weight, 153.  
 Benin, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (226).  
 Benld, Ill., to Peoria, Ill. Bituminous coal, 624.  
 Berlin, N. H., from Texas common points. Cottonseed oil, 640.  
 Bessemer, Mich., from St. Paul, Minn. Coke, 480.  
 Betteravia, Calif., to Salt Lake City, Utah. Petroleum products, 8.  
 Big Heart, Okla., to Independence, Kans. Absorption gasoline, 611.  
 Big Stone City, S. Dak., from Roundup, Mont. Coal, 249 (252).  
 Billings, Mont., to San Francisco, Calif. Agate bowlders or pebbles, 674.  
 Binghamton, N. Y., from Arkansas, Louisiana, and Oklahoma. Cottonseed cake and meal, 640.  
 Birmingham, Ala. Switching, 255.  
 Birmingham, Ala., to and from Alabama. Class and commodity rates, 179.  
 Birmingham, Ala., from Bryanmound, Tex. Gasoline, 601.  
 Birmingham, Ala., from Mereaux and North Baton Rouge, La. Gasoline, 509.  
 Black River Falls, Wis., from St. Paul, Minn. Coke, 480.  
 Bluefield, Va., from Detroit, Mich. Salt, 441.  
 Blytheville, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Boaz, Calif., to Salt Lake City, Utah. Petroleum products, 8.  
 Boise, Idaho, from Sunnyside, Utah. Run of mine coal, 607.  
 Booneville, Ind., to Cape Girardeau, Mo. Unmanufactured tobacco, 314.  
 Boston, Mass., from Chicago, Ill. Pulled wool, 409.  
 Boston, Mass., to Maine Central R. R. points. Iron and steel articles, 100.  
 Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J. Wool in the grease, 556.  
 Boston, Mass., from San Francisco, Calif. Kapok, 663.  
 Boston, Mass., from Texas common points. Cottonseed cake and meal, 640.  
 Boyd, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 226 (227).  
 Brainerd, Minn., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.  
 Brawley, Calif., from Texas and Oklahoma. Gasoline, 472.  
 Brazil, Ind., from Clinton and Brazil districts, Ind. Mine-run bituminous coal, 338.  
 Brazil district, Ind., to Clinton, Locan, Mount Silica, and Brazil, Ind. Mine-run bituminous coal, 338.  
 Brewster, Kans., to Chicago, Ill. Rabbits, 131.  
 Brightwood, Mass. Live stock, loading and unloading, 44.  
 Bristol, S. Dak., from Roundup, Mont. Coal, 249 (252).  
 Bristol, Tenn., from Detroit, Mich. Salt, 441.  
 Bristow, Okla., from Burkburnett, Tex. Lumber, 599.  
 Bristow, Okla., from Shamrock, Okla. Iron pipe, 113.  
 British Columbia from Alexandria, La. Hardwood lumber, 595.  
 Broken Bow, Nebr., from Douglas, W. Va. Smithing coal, 129.  
 Brookings, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).  
 Brownwood, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk-line territory. Petroleum and products 426.  
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- Bryansound, Tex., to Birmingham, Ala. Gasoline, 601.
- Buffalo, N. Y., from Missouri, Arkansas, Louisiana, Oklahoma, and Texas. Cottonseed and vegetable cake, meal, and oil, 640.
- Buffalo, N. Y., to Portland, Oreg. Steel shafting, 633.
- Buffalo-Pittsburgh territory from Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana and Ohio. Hardwood lumber and forest products, 68.
- Buhler, Kans., to Missouri and states east thereof. Flour and grain products, 613.
- Burkburnett, Tex., to Bristow, Slick, and Commerce, Okla. Lumber, 599.
- Burkburnett, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk-line territory. Petroleum and products, 426.
- Burkburnett group, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk-line territory. Petroleum and products, 426.
- Burke, Idaho, to Wallace, Idaho. Ores and concentrates, 140.
- Burlington, Iowa, from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.
- Burlington, Iowa, from Douglas, W. Va. Smithing coal, 129.
- Cairo, Ill., to Arkansas. Grain and products, 475.
- Cairo, Ill., from Texas common points. Cottonseed cake and meal, 640.
- Cairo, Ill., from various points. Paper and paper articles, 571 (587).
- Calico Rock, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Caliente, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- California from Alexandria, La. Hardwood lumber, 595.
- California to and from Oakland, Calif. Grain and products, 593.
- California to Salt Lake City, Ogden, and Provo, Utah. Petroleum products, 8.
- California to Tacoma, Wash. Dried fruit, 679.
- Calipatria, Calif., from Texas and Oklahoma. Gasoline, 472.
- Camden, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Camden, N. J., to Portland, Oreg. Steel shaftings, 633.
- Camp Douglas, Wis., from St. Paul, Minn. Coke, 480.
- Canada from Arkansas and Louisiana. Lumber; transit arrangements, 94.
- Canada from Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio. Hardwood lumber and forest products, 68.
- Canada to Townley, N. J. Hay, 549.
- Canton, Ill., to Peoria, Ill. Bituminous coal, 624.
- Canton, Ohio, to Terre Haute, Ind. Roasted zinc ore, 263.
- Cupe Girardeau, Mo., from Tennessee, Kentucky, and Indiana. Unmanufactured tobacco, 314.
- Carbondale, Pa., to South Brewer, Me. Anthracite coal, 159 (160).
- Carbon Hill, Ala., from North Baton Rouge, La. Gasoline and refined oil, 274.
- Cardwell, Mo., to Morrilton, Ark. Cypress piling, 42.
- Carolina territory from Memphis, Tenn., originating in Arkansas, Oklahoma, Texas, and Louisiana. Grain and products, 19.

- Carolina territory from Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio. Hardwood lumber and forest products, 68.
- Carson City, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Carthage, Tenn., to Cape Girardeau, Mo. Unmanufactured tobacco, 314.
- Casper, Wyo., to Salt Lake City, Utah. Petroleum products, 8.
- Castle Gate district, Utah, to Nevada. Coal, 216.
- Cedar Rapids, Iowa, from St. Paul, Minn. Coke, 480.
- Cedar Rapids, Iowa, from various points. Paper and paper articles, 571 (587).
- Central freight association territory from Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio. Hardwood lumber and forest products, 68.
- Central territory from La Crosse, Wis. Class rates, 371.
- Central territory from Mexico, stored and reshipped at Indianapolis, Ind. Sisal, 683.
- Chaffee, Mo. Divisions, 359.
- Chambers, Nebr., from Ericson, Nebr. Extension of railroad, 452.
- Chanute, Kans., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.
- Charles City, Iowa, from St. Paul, Minn. Coke, 480.
- Charleston, S. C., from Coral Ridge, Ky. Hollow building tile, 172.
- Charlotte, N. C., to Greensboro, N. C., and Columbia, S. C. Sulphuric acid, 277.
- Charlotte, N. C., from Memphis, Tenn., originating in Arkansas, Oklahoma, Texas and Louisiana. Grain and products, 19.
- Chatom, Ala., to and from Mobile, Ala., and Meridian, Miss. Class and commodity rates, 179 (193).
- Chattanooga, Tenn. Lumber; demurrage and reconsignment, 637.
- Chicago, Ill. Live stock; loading and unloading, 44.
- Chicago, Ill., from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.
- Chicago, Ill., from Denver, Colo. Green salted sheep pelts and green salted hides, 33.
- Chicago, Ill., from Indiana and Illinois. Bituminous coal, 671.
- Chicago, Ill., from Kettle Valley, Fayette, Lenoir, and Essanbee, Ind. Bituminous coal, 560.
- Chicago, Ill., to Little Rock, Ark. Animal tankage, 149.
- Chicago, Ill., from Louisiana. Salt, 81.
- Chicago, Ill., from Norton, Rexford, Brewster, Stockton, and Lenora, Kans. Rabbits, 131.
- Chicago, Ill., to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.
- Chicago, Ill., to Pacific coast terminals. O-Cedar polish, mops, and mop handles, 235.
- Chicago, Ill., to Philadelphia, Pa., New York, N. Y., Boston, Mass., and other points in trunk-line territory and New England. Pulled wool, 409.
- Chicago, Ill., from St. Paul, Minn. Coke, 480.
- Chicago, Ill., to St. Paul and Duluth, Minn. Creosote and gas-tar oils, 1.
- Chicago, Ill., from San Francisco, Calif. Kapok, 663.
- Chicago, Ill., from Texas common points. Cottonseed cake and meal, 640.
- Chicago Heights, Ill., from Republic, Ga. Bauxite ore, 443.
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- Chippewa Falls, Wis., from St. Paul, Minn. Coke, 480.
- Chrome. N. J., from Port Colborne, Ontario, Canada. Blister copper, 627.
- Cincinnati, Ohio, to and from Andrews, Ky. Scrap iron, 279.
- Cincinnati, Ohio, from Hillsboro, Ill. Acid, 383.
- Cincinnati, Ohio, from McKenzie and Paris, Tenn. Sweet potatoes, 175.
- Cincinnati, Ohio, from Woodmont and Johnson's Siding, Md. Peaches, 175.
- Cisco, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk-line territory. Petroleum and products, 426.
- Citizens mines A and B, Springfield district, Ill., to Illinois, Indiana, Iowa, and Missouri. Bituminous coal, 271.
- Citrona, Calif., to South San Francisco, Calif. Paddy rice, 165.
- Clarinda, Iowa, from Douglas, W. Va. Smithing coal, 129.
- Clarkdale, Ariz., from Dawson, N. Mex. Coal, 377.
- Clarksville, Tenn., from Kentucky mines. Coal, 529.
- Clearfield district, Pa., to Rumford and South Brewer, Me. Bituminous coal, 159.
- Clemoor, Ill., to Memphis, Tenn. Corn and oats, 265.
- Cleveland, Ohio, to Minford, Ohio. Fertilizer, 615.
- Clinton, N. J., from Boston and East Boston, Mass. Wool in the grease, 556.
- Clifton Forge, Va., from Detroit, Mich. Salt, 441.
- Clinton, Ind., from Clinton and Brazil districts, Ind. Mine-run bituminous coal, 338.
- Clinton, Iowa, from St. Paul, Minn. Coke, 480.
- Clinton, Mass., to Maine Central R. R. points. Iron and steel articles, 100.
- Clinton district, Ind., to Clinton, Locan, Mount Silica, and Brazil, Ind. Mine run bituminous coal, 338.
- Coaldale, Pa., to South Brewer, Me. Anthracite coal, 159 (160).
- Coburg, Iowa, from Terre Haute, Ind. Coke, 604.
- Cochecton, N. Y., from Hood mine, South Rivesville, W. Va. Bituminous coal, 293.
- Cochise, Ariz., from Timber, Oreg., reconsigned to Globe, Ariz. Lumber, 119.
- Coleman, Fla., to Providence, R. I. Cabbage, 300.
- Colorado to Iowa and Nebraska. Coal, 145.
- Colorado to and from Pacific coast points. Restricted application of group J rates, 96.
- Colorado to Salt Lake City, Ogden, and Provo, Utah. Petroleum products, 8.
- Colorado common points to and from Pacific coast points. Restricted application of group J rates, 96.
- Colorado common points from Sault Ste. Marie, Ont., and Fox River group, Wis. Paper and paper articles, 571.
- Columbia, S. C., from Charlotte, N. C. Sulphuric acid, 277.
- Columbus, Ohio, from Arkansas, Louisiana, and Oklahoma. Cottonseed cake and meal, 640.
- Columbus, Ohio, to New York, N. Y. Frozen fresh meat, 65.
- Commerce, Okla., from Burkburnett, Tex. Lumber, 599.
- Concordia, Kans., to New York, N. Y. Rabbits, 131.
- Conde, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).
- Connecticut from East Braintree, Mass. Fuel oil, petroleum, and petroleum products, 535.
- Constable Hook, N. J., from Port Colborne, Ontario, Canada. Blister copper, 627.

- Copperhill, Tenn., from Alabama, Georgia, Missouri, West Virginia, New York, Wisconsin, South Carolina, North Carolina, Tennessee, Illinois, Ohio, Indiana, Virginia, Pennsylvania, New Jersey, and Florida. Sulphuric acid sediment, 238.
- Coral Ridge, Ky., to Charleston, S. C. Hollow building tile, 172.
- Corinth, Miss., to Tennessee. Class rates, 320.
- Cortland, N. Y., to official territory. Self-rising compound flour, 309.
- Cotter, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Council Bluffs, Iowa, from St. Paul, Minn. Coke, 480.
- Covington, Okla., from Shamrock, Okla. Iron pipe, 113.
- Cresbard, S. Dak., from Roundup, Mont. Coal, 249 (252).
- Cromwell, Ala., to and from Mobile, Ala., and Meridian, Miss. Class and commodity rates, 179 (193).
- Crookston, Minn., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Croton, N. J., to Duane Street, New York, N. Y. Fruits and vegetables, 135.
- Crystal City, Mo., from Kentucky mines, via Thebes, Ill. Coal, 228.
- Cullomburg, Ala., to and from Mobile, Ala., and Meridian, Miss. Class and commodity rates, 179 (193).
- Cumberland, Md., to eastern destinations, originating at Western Maryland Ry. points. Coal, 103.
- Daleville, Ind., from Linton group, Ind. Bituminous coal, 157.
- Dallas, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory. Petroleum and products, 426.
- Damariscotta Mills, Me., from Boston, Gloucester, Worcester, Fitchburg, and Clinton, Mass. Iron and steel articles, 100.
- Davenport, Iowa, from various points. Paper and paper articles, 571 (587).
- Dawson, N. Mex., to Clarkdale and Jerome, Ariz. Coal, 377.
- Dayton, Ohio, from Arkansas, Louisiana, and Oklahoma. Cottonseed cake and meal, 640.
- Demopolis, Ala., to and from Alabama. Class and commodity rates, 179.
- Denver, Colo., to and from Pacific coast points. Restricted application of group J rates, 96.
- Denver, Colo., to St. Joseph, Mo., and Chicago, Ill. Green salted sheep pelts and green salted hides, 33.
- Denver, Colo., from various points. Paper and paper articles, 571 (587).
- De Queen, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Dermott, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and grain products, 475.
- Des Moines, Iowa, from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.
- Des Moines, Iowa, from St. Paul, Minn. Coke, 480.
- Des Moines, Iowa, from various points. Paper and paper articles, 571 (587).
- Detroit, Mich., from Norton, Kans. Rabbits, 131.
- Detroit, Mich., to Oklahoma City, Okla. Building and roofing paper 571 (585).
- Detroit, Mich., to Virginia and Tennessee. Salt, 441.
- Dewey, Okla., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.
- Dinuba, Calif., to Tacoma, Wash. Dried fruit, 679.
- 66 I. C. C.



- District of Columbia from Cortland, N. Y. Self rising compound flour, 309.  
 Dodsonville, Tex., to Wichita, Kans. Live stock, 591.  
 Doland, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (252).  
 Douglas, W. Va., to Burlington, Clarinda, and Red Oak, Iowa, Broken Bow, Nebr., and La Crosse, Wis. Smithing coal 129.  
 Drummond Wis., from St. Paul, Minn. Coke, 480.  
 Duane Street, New York, N. Y., from New Jersey terminals. Fruits and vegetables, 135.  
 Dubuque, Iowa, from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.  
 Duluth, Minn., from Chicago, Ill., and St. Louis, Mo. Creosote and gas-tar oils, 1.  
 Duluth, Minn., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.  
 Duluth, Minn., from various points. Paper and paper articles, 571 (587).  
 Duncan, Okla., from Ranger, Tex. Yellow-pine lumber, 327.  
 Dundee, N. J., from Boston and East Boston, Mass. Wool in the grease, 556.  
 Dunmore, Pa., to South Brewer, Me. Anthracite coal, 159 (160).  
 East Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J. Wool in the grease 556.  
 East Braintree, Mass., to New England. Fuel oil, petroleum, and petroleum products, 535.  
 East Cambridge, Mass. Live stock, loading and unloading, 44.  
 East Ely, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Eastern trunk line territory from Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana and Ohio. Hardwood lumber and forest products 68.  
 Eastland, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory. Petroleum and products, 426.  
 Eastland, Tex., from Preston, La. Lumber, 297.  
 East New York, N. Y., to and from New York, New Haven & Hartford R. R. points. Class rates, 347 .  
 East St. Louis, Ill., to Kentucky, Mississippi, Alabama, Georgia, and Florida. Gasoline, refined oils, lubricating oils, and petroleum products, 37.  
 Eaton, Ind., from Linton group, Ind. Bituminous coal, 157.  
 Eau Claire, Wis., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.  
 Eau Claire, Wis., from St. Paul, Minn. Coke, 480.  
 El Dorado, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Eldorado, Kans., from Independence, Kans. Lubricating oil, 295.  
 Electra, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory. Petroleum and products, 426.  
 Elko, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Ellenton, Fla., to Oklahoma City, Okla. Fuller's earth, 562.  
 Ellsworth, Wis., from St. Paul, Minn. Coke, 480.  
 El Paso, Tex., from various points. Paper and paper articles, 571 (587).

- Elroy, Wis., from Hillsboro, Ill., reconsigned to Wausau, Wis. Lump coal, 469.  
 Elroy, Wis., from St. Paul, Minn. Coke, 480.  
 Elwood, Ind., from Linton group, Ind. Bituminous coal, 157.  
 Emaus, Pa., to West Collingswood, N. J. Slag, 503.  
 Emerald, Wis., from St. Paul, Minn. Coke, 480.  
 Emeryville, Calif., from transcontinental groups A, D, E, and J. Fire brick, 169.  
 Ericson, Nebr., to Chambers, Nebr. Extension of railroad, 452.  
 Escanaba, Mich., from St. Paul, Minn. Coke, 480.  
 Essanbee, Ind., to Chicago, Ill. Bituminous coal, 560.  
 Etna, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (226).  
 Eudora, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Eureka, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Evansville, Ind., from Hillsboro, Ill. Acid, 383.  
 Evansville, Ind., to St. Paul and Minneapolis, Minn. Class and commodity rates, 512.  
 Fairchild, Wis., from St. Paul, Minn. Coke, 480.  
 Fairfield, Ala., to and from Mobile, Ala., and Meridian, Miss. Class and commodity rates, 179 (193).  
 Fairmont, W. Va., to Rumford and South Brewer, Me. Bituminous coal, 159.  
 Fallon, Mont., to San Francisco, Calif. Agate bowlders or pebbles, 674.  
 Fallon, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Fall River, Mass., from Texas common points. Cottonseed oil, 640.  
 Falls Creek, Pa., to South Brewer, Me. Bituminous coal, 159 (160).  
 Fayette, Ind., to Chicago, Ill. Bituminous coal, 560.  
 Fayetteville, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Festus, Mo., from Kentucky mines, via Thebes, Ill. Coal, 228.  
 First Ford, Va., to Pittsburgh and Sharpsburg, Pa. Manganese ore, 421.  
 Fitchburg, Mass., to Maine Central R. R. points. Iron and steel articles, 100.  
 Florence, Ala. Switching, 255.  
 Florence, Colo., to Salt Lake City, Utah. Petroleum products, 8.  
 Florida to central territory and other defined territories. Hardwood lumber and forest products, 68.  
 Florida to Copperhill, Tenn. Sulphuric acid sediment, 238.  
 Florida to Norfolk, Pig Point, Portsmouth, and Newport News, Va. Wooden paving-block material, 569.  
 Florida from Wood River and East St. Louis, Ill., Louisville, Ky., Baton Rouge, La., Savannah, Ga., and Jacksonville and Port Tampa, Fla. Gasoline, refined oils, lubricating oils, and petroleum products, 37.  
 Fontanelle, Iowa, from Terre Haute, Ind. Coke, 604.  
 Fordyce, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Forrest City, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Fort Benjamin Harrison, Ind., from Linton group, Ind. Bituminous coal, 157.  
 Fort Dodge, Iowa, from St. Paul, Minn. Coke, 480.  
 Fort Frances, Ont., to Nebraska, Kansas, Missouri, Oklahoma, Texas, Arkansas, and Louisiana. Paper and paper articles, 571.  
 66 I. C. C.

- Fort Smith, Ark., to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed cake and meal, 640 (646).
- Fort Steele, Wyo., to Salt Lake City, Utah. Petroleum products, 8.
- Fort Wayne, Ind., from Hartford City, Ind. Box board, 669.
- Fort Worth, Tex., to Carolina territory, via Memphis, Tenn. Grain and products, 19.
- Fort Worth, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory. Petroleum and products, 426.
- Fort Worth, Tex., from St. Louis, Mo. Auto-body woodwork, 617.
- Fowler, Calif., to Tacoma, Wash. Dried fruit, 679.
- Fox River group, Wis., to various destinations. Paper and paper articles, 571.
- Frankford, Philadelphia, Pa., from Port Richmond, Philadelphia, Pa. Imported nitrate of soda, 381.
- Frankfort, Ind., to St. Paul and Minneapolis, Minn. Class and commodity rates, 512.
- Franklin, Ky., to Cape Girardeau, Mo. Unmanufactured tobacco, 314.
- Fredonia, Kans., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.
- Freeport, Me., from Boston, Gloucester, Worcester, Fitchburg, and Clinton, Mass. Iron and steel articles, 100.
- Fresno, Calif., to Tacoma, Wash. Dried fruit, 679.
- Fulton county group, Ill., to Peoria, Ill. Bituminous coal, 624.
- Gadsden, Ala. Switching, 255.
- Galesburg, Ill., from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.
- Gallatin, Tenn., to Cape Girardeau, Mo. Unmanufactured tobacco, 314.
- Galveston, Tex., from various points. Paper and paper articles, 571 (587).
- Garfield, N. J., from Boston and East Boston, Mass. Wool in the grease, 556.
- Garfield, N. J., from Hood mine, South Rivesville, W. Va. Bituminous coal, 293.
- Garnett, Okla., from Shamrock, Okla. Crushed stone, 113.
- Garretson, S. Dak., from Weed and Westwood, Calif., and Klamath Falls, Oreg. Lumber, 109.
- Gary, Ind., to Portland, Oreg. Steel shafting, 633.
- Geneva, Mont., to North Dakota, South Dakota, and Minnesota. Coal, 249.
- Georgia to central territory and other defined territories. Hardwood lumber and forest products, 68.
- Georgia to Copperhill, Tenn. Sulphuric acid sediment, 238.
- Georgia to Norfolk, Pig Point, Portsmouth, and Newport News, Va. Wooden paving-block material, 569.
- Georgia from Wood River and East St. Louis, Ill., Louisville, Ky., Baton Rouge, La., Savannah, Ga., and Jacksonville and Port Tampa, Fla. Gasoline, refined oils, lubricating oils, and petroleum products, 37.
- Gilbertown, Ala., to and from Mobile, Ala., and Meridian, Miss. Class and commodity rates, 179 (193).
- Girard, Ill., to Peoria, Ill. Bituminous coal, 624.
- Glade Springs, Va., from Detroit, Mich. Salt, 441.
- Glendive, Mont., to San Francisco, Calif. Agate bowlders or pebbles, 674.
- Globe, Ariz., from Timber, Oreg., reconsigned at Cochise, Ariz. Lumber, 119.
- Gloucester, Mass., to Maine Central R. R. points. Iron and steel articles, 100.

- Golconda, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Gordon, Wis., from St. Paul, Minn. Coke, 480.  
 Gould, Okla., to Wichita, Kans. Livestock, 591.  
 Grand Forks, N. Dak., from various points. Paper and paper articles, 571 (587).  
 Grand Rapids, Wis., from St. Paul, Minn. Coke, 480.  
 Greensboro, N. C., from Charlotte, N. C. Sulphuric acid, 277.  
 Greenwich, N. J., to Pier 28, New York, N. Y. Canned tomatoes, 305.  
 Greybull, Wyo., to Klamath Falls, Oreg. Gasoline, 472.  
 Greybull, Wyo., to Salt Lake City, Utah. Petroleum products, 8.  
 Groos, Mich., to Oklahoma City and Okmulgee, Okla. Paper and paper articles, 571.  
 Groton, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (252).  
 Guin, Ala., from North Baton Rouge, La. Gasoline and refined oil, 274.  
 Hamburg, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Hamilton, Ill. Compensation for crossing the river bridge, 545.  
 Hamilton, Ohio, to Mobile, Ala., for export. Printing paper, 247.  
 Hancock, N. Y., from Hood mine, South Rivesville, W. Va. Bituminous coal, 293.  
 Hannibal, Mo., from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.  
 Hargrove Switch, Mo., to Morrilton, Ark. Cypress piling, 42.  
 Hartford City, Ind., to Fort Wayne, Ind. Box board, 669.  
 Hartsdale, Ind., to St. Paul and Minneapolis, Minn. Class and commodity rates, 512.  
 Hartsville, Tenn., to Cape Girardeau, Mo. Unmanufactured tobacco, 314.  
 Haskell, N. J., to Arlington, N. J. Mixed or nitrating acid, 291.  
 Haskell, Okla., to Shamrock, Okla. Drilling machinery, 113.  
 Hastings, Nebr., from various points. Paper and paper articles, 571 (587).  
 Hawley group, Calif. and Nev., to interstate destinations. Lumber and forest products, 56.  
 Hazen, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Hermansville, Mich., from St. Paul, Minn. Coke, 480.  
 Hillsboro, Ill., to Cincinnati, Ohio, and Evansville and Jeffersonville, Ind. Acid, 383.  
 Hillsboro, Ill., to Elroy, Wis., reconsigned to Wausau, Wis. Lump coal, 469.  
 Hollis, Okla., to Wichita, Kans. Livestock, 591.  
 Hood mine, South Rivesville, W. Va., to Hancock, Cocheton, and Olean, N. Y., and Garfield, N. J. Bituminous coal, 293.  
 Hopatcong, N. J., to Arlington, N. J. Mixed or nitrating acid, 291.  
 Hope, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Hopkinsville, Ky., to Cape Girardeau, Mo. Unmanufactured tobacco, 314.  
 Hot Springs, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Howard, Kans., to Anadarko, Okla. Secondhand pipe, oil-well casing, and supplies, 303.  
 Humboldt, Kans., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.  
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- Huntington, W. Va., from Missouri, Arkansas, Louisiana, Oklahoma, and Texas. Cottonseed and vegetable cake, meal, and oil, 640.
- Hurley, Wis., from St. Paul, Minn. Coke, 480.
- Huron, S. Dak., from Roundup, Mont. Coal, 249 (252).
- Huron, S. Dak., from St. Paul, Minn. Coke, 480.
- Hutchinson, Kans., to Oklahoma City, Okla. Strawboard and chipboard, 571 (585).
- Illinois. Increase in rates, 850.
- Illinois to Chicago, Ill. Bituminous coal, 671.
- Illinois from Citizens mines A and B, Springfield district, Ill. Bituminous coal, 271.
- Illinois to Copperhill, Tenn. Sulphuric acid sediment, 238.
- Illinois from Fox River group, Wis. Paper and paper articles, 571.
- Illinois to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.
- Illinois from St. Paul, Minn. Coke, 480.
- Illinois to Townley, N. J. Hay, 549.
- Illinois-Wisconsin territory from Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio. Hardwood lumber and forest products, 68.
- Independence, Kans., from Big Heart and Turley, Okla. Absorption gasoline, 611.
- Independence, Kans., to Eldorado, Kans. Lubricating oil, 295.
- Independence, Kans., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.
- Independence, Kans., to Sheffield, Iowa, reconsigned to Minneapolis, Minn. Kerosene, 313.
- Indiana from Arkansas and Louisiana. Lumber; transit arrangements, 94.
- Indiana to Cape Girardeau, Mo. Unmanufactured tobacco, 314.
- Indiana to central territory and other defined territories. Hardwood lumber and forest products, 68.
- Indiana to Chicago, Ill. Bituminous coal, 671.
- Indiana from Citizens mines A and B, Springfield district, Ill. Bituminous coal, 271.
- Indiana to Copperhill, Tenn. Sulphuric acid sediment, 238.
- Indiana to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.
- Indiana to St. Paul and Minneapolis, Minn. Class and commodity rates, 512.
- Indiana limestone district to various points. Stone, 26.
- Indianapolis, Ind. Sisal; switching, 683.
- Indianapolis, Ind., to Ohio. Cancellation of joint rates, 449.
- Indianapolis, Ind., to St. Paul and Minneapolis, Minn. Class and commodity rates, 512.
- Indianapolis, Ind., from Texas common points. Cottonseed oil, cake, and meal, 640.
- International Falls, Minn., to Nebraska, Kansas, Missouri, Oklahoma, Texas, Arkansas, and Louisiana. Paper and paper articles, 571.
- Iola, Kans., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.
- Iowa from Citizens mines A and B, Springfield district, Ill. Bituminous coal, 271.
- Iowa from Colorado, Wyoming, Kansas, and Arkansas. Coal, 145.

- Iowa from Fox River group, Wis. Paper and paper articles, 571.  
 Iowa from Kansas gas belt and Dewey, Okla. Cement, 495.  
 Iowa to North Dakota. Corn and oats, 126.  
 Iowa from St. Paul, Minn. Coke, 480.  
 Iowa Park, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk-line territory. Petroleum and products, 426.  
 Ironaton, Ala. Switching, 255.  
 Iron Mountain, Mich., from St. Paul, Minn. Coke, 480.  
 Iron River, Mich., from St. Paul, Minn. Coke 480.  
 Iroquois, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).  
 Jackson, Ala., to and from Mobile, Ala., and Meridian Miss. Class and commodity rates 179 (193).  
 Jackson, Miss., from New Orleans, La. Green coffee, 389.  
 Jackson, Miss., from various points. Paper and paper articles, 571 (587).  
 Jackson, Tenn. Lumber; demurrage and reconsignment charges, 637.  
 Jackson, Tenn., from Corinth, Miss. Class rates, 320.  
 Jacksonville, Fla., to Kentucky, Mississippi, Alabama, Georgia, and Florida. Gasoline, refined oils, lubricating oils, and petroleum products, 37.  
 Jamison, Pa., to Oskaloosa, Iowa, and Sheridan, Wyo. Coke, 129.  
 Janesville, Wis., from St. Paul, Minn. Coke, 480.  
 Jasper, Minn., from Weed and Westwood, Calif., and Klamath Falls, Oreg. Lumber, 109.  
 Jefferson Island, La., to Chicago, Ill., St. Louis, Mo., and other points. Salt, 81.  
 Jeffersonville, Ind., from Hillsboro, Ill. Acid, 383.  
 Jelks, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Jerome, Ariz., from Dawson, N. Mex. Coal, 377.  
 Jersey City, N. J. Fresh meat; switching, 445.  
 Jersey City, N. J. (Float bridge to Pier A). Frozen beef livers, 760.  
 Jersey City, N. J., to Duane Street, New York, N. Y. Fruits and vegetables, 135.  
 Johnson's Siding, Md., to Cincinnati, Ohio. Peaches, 175.  
 Joliet, Ill., to Oakland (Melrose), Calif. Automobile jacks, 677.  
 Joplin, Mo., from various points. Paper and paper articles, 571 (587).  
 Kalamazoo, Mich., to Oklahoma City, Okla. Building and roofing paper, 571 (585).  
 Kansas to Buhler, Kans., milled and the products shipped to Missouri and states east thereof. Wheat, 613.  
 Kansas from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.  
 Kansas to Chicago, Ill., Detroit, Mich., Philadelphia, Pa., and New York, N. Y. Rabbits, 131.  
 Kansas from International Falls, Minn., Fort Frances and Sault Ste. Marie, Ontario, and Fox River group, Wis. Paper and paper articles, 571.  
 Kansas to Iowa and Nebraska. Coal, 145.  
 Kansas to Kansas City, Mo.-Kans. Coal, 457.  
 Kansas from Kansas gas belt and Dewey, Okla. Cement, 495.  
 Kansas to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.  
 Kansas from St. Paul, Minn. Coke, 480.  
 Kansas to Salt Lake City, Ogden, and Provo, Utah. Petroleum products, 8.  
 Kansas to Sioux Falls, S. Dak. Window glass, 757.

- Kansas City, Kans., from St. Paul, Minn. Coke, 480.  
 Kansas City, Mo., to Arkansas. Grain and products, 475.  
 Kansas City, Mo., from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.  
 Kansas City, Mo., to Oklahoma City, Okla. Wrapping paper, 571 (587).  
 Kansas City, Mo., from St. Paul, Minn. Coke, 480.  
 Kansas City, Mo., from various points. Paper and paper articles, 571 (587).  
 Kansas City, Mo., from Williams, Okla. Coal, 588.  
 Kansas City, Mo.-Kans., to Oklahoma City, Okla. Hogs, 282.  
 Kansas City, Mo.-Kans., from Springfield, Ill., district, and Missouri, Kansas, Oklahoma, and Arkansas mines. Coal, 457.  
 Kansas gas belt to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.  
 Kensett, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.  
 Kent, Wash., from Pittsburgh district, Pa. Tin plate; demurrage, 553.  
 Kentucky from Arkansas and Louisiana. Lumber; transit arrangements, 94.  
 Kentucky to Cape Girardeau, Mo. Unmanufactured tobacco, 314.  
 Kentucky to central territory and other defined territories. Hardwood lumber and forest products, 68.  
 Kentucky from Wood River and East St. Louis, Ill., Louisville, Ky., Baton Rouge, La., Savannah, Ga., and Jacksonville and Port Tampa, Fla. Gasoline, refined oils, lubricating oils, and petroleum products, 37.  
 Kentucky mines to Festus and Crystal City, Mo., via Thebes, Ill. Coal, 228.  
 Kentucky mines to Nashville and Clarksville, Tenn. Coal, 529.  
 Keokuk, Iowa. Compensation for crossing the river bridge, 545.  
 Keokuk, Iowa, from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.  
 Kettle Valley, Ind., to Chicago, Ill. Bituminous coal, 560.  
 Kincaid, Ill., to Peoria, Ill. Bituminous coal, 624.  
 Klamath Falls, Oreg., to Alvord, Iowa, Jasper, Marshall, Waverly, Litchfield, Pipestone, and Sauk Center, Minn., and Garretson, S. Dak. Lumber, 109.  
 Klamath Falls, Oreg., from Greybull, Wyo. Gasoline, 472.  
 Krum, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Kulshan, Wash., to Bellingham, Wash. Fir piling; minimum weight, 153.  
 La Crosse, Wis., from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.  
 La Crosse, Wis., from Douglas, W. Va. Smithing coal, 129.  
 La Crosse, Wis., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.  
 La Crosse, Wis., to New England, trunk line, and central territories. Class rates, 371.  
 La Crosse, Wis., to New York, N. Y. Class rates, 371.  
 La Crosse, Wis., from St. Paul, Minn. Coke, 480.  
 Ladysmith, Wis., from St. Paul, Minn. Coke, 480.  
 Las Vegas, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).  
 Lawrence, Ind., from Linton group, Ind. Bituminous coal, 157.  
 Le Beau, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).  
 Lenoir, Ind., to Chicago, Ill. Bituminous coal, 560.  
 Lenora, Kans., to Chicago, Ill. Rabbits, 181.  
 Leola, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).

- Leonard, Okla., to Shamrock, Okla. Gas engines, 118.
- Lexington, Ill., to Memphis, Tenn. Corn and oats, 265.
- Lien, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (226).
- Lincoln, Nebr., from various points. Paper and paper articles, 571 (587).
- Linton group, Ind., to Anderson, Eaton, Marion, Lawrence, New Castle, Daleville, Alexandria, Muncie, Elwood, Springport, Tipton, Winchester, and Fort Benjamin Harrison, Ind. Bituminous coal, 157.
- Litchfield, Minn., from Weed and Westwood, Calif., and Klamath Falls, Oreg. Lumber, 109.
- Little Rock, Ark., from Chicago, Ill. Animal tankage, 149.
- Little Rock, Ark., to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed cake and meal, 640 (646).
- Little Rock, Ark., from various points. Paper and paper articles, 571 (587).
- Locan, Ind., from Clinton and Brazil districts; Ind. Mine-run bituminous coal, 338.
- Locans, Calif., to Tacoma, Wash. Dried fruit, 679.
- Lockland, Ohio, to Andrews, Ky. Scrap iron, 279.
- Logansport, La., to Ranger, Tex. Lumber, 297.
- Lone Rock, Wis., from St. Paul, Minn. Coke, 480.
- Long Island to and from New York, New Haven & Hartford R. R. points. Class rates, 347.
- Los Angeles, Calif., from Orange, Mass. Tapioca, 267.
- Los Angeles, Calif., to Salt Lake City, Utah. Petroleum products, 8.
- Louisiana from Beaumont, Tex. Iron and steel articles, 544.
- Louisiana to Canada, Indiana, Kentucky, Michigan, New York, Ohio, Pennsylvania, and West Virginia, via Memphis, Tenn., or Louisville, Ky. Lumber; transit arrangements, 94.
- Louisiana to Carolina territory, via Memphis, Tenn. Grain and products, 19.
- Louisiana to central territory and other defined territories. Hardwood lumber and forest products, 68.
- Louisiana to Chicago, Ill., St. Louis, Mo., and other points. Salt, 81.
- Louisiana from International Falls, Minn., Fort Frances and Sault Ste. Marie, Ont., and Fox River group, Wis. Paper and paper articles, 571.
- Louisiana to Meridian, Miss., and Jackson and Chattanooga, Tenn., reconsigned to various points. Lumber, 637.
- Louisiana to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed and vegetable cake, meal, and oil, 640.
- Louisiana to and from Natchez and Vicksburg, Miss. Class and commodity rates, 386.
- Louisville, Ky. Lumber and forest products; milling-in-transit, 67.
- Louisville, Ky. Lumber; transit arrangements, 94.
- Louisville, Ky., to Kentucky, Mississippi, Alabama, Georgia, and Florida. Gasoline, refined oils, lubricating oils, and petroleum products, 37.
- Louisville, Ky., from Texas common points. Cottonseed cake and meal, 640.
- Lovelace, Ga., to Norfolk, Va., held at Portsmouth, Va. Lumber, 241.
- MacGregor, Wyo., to Ute, Iowa. Coal, 145.
- McGehee, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- McGill, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- 66 I. C. C.



- McKeesport, Pa., to Taft, Calif. Wrought-iron pipe, 472.
- McKenzie, Tenn., to Cincinnati, Ohio. Sweet potatoes, 175.
- McLean, Ill., to Memphis, Tenn. Corn and oats, 265.
- McNeill, Idaho, to and from various points. Potatoes, live stock, hay, grain, and other farm products, 330.
- Madison, Wis., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Madison, Wis., from St. Paul, Minn. Coke, 480.
- Mahanoy, Pa., to Rumford, Me. Anthracite coal, 150 (160).
- Maine Central R. R. points from Boston, Gloucester, Worcester, Fitchburg, and Clinton, Mass. Iron and steel articles, 100.
- Manistique, Mich., to Oklahoma City and Okmulgee, Okla. Paper and paper articles, 571.
- Mankato, Minn., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Marion, Ind., from Linton group, Ind. Bituminous coal, 157.
- Marquette, Mich., from St. Paul, Minn. Coke, 480.
- Marseilles, Ill., to Oklahoma City, Okla. Building and roofing paper, 571 (585).
- Marshall, Minn., from Weed and Westwood, Calif., and Klamath Falls, Oreg. Lumber, 109.
- Marshalltown, Iowa, from St. Paul, Minn. Coke, 480.
- Marshfield, Wis., from St. Paul, Minn. Coke, 480.
- Maryland from Cortland, N. Y. Self-rising compound flour, 309.
- Maryland mines to Woodbury, N. J. Coal, 490.
- Mason City, Iowa, to and from Mississippi River crossings, on traffic originating at or destined to official territory. Proportional class rates, 619.
- Mason City, Iowa, from St. Paul, Minn. Coke, 480.
- Mason City, Iowa, from various points. Paper and paper articles, 571 (587).
- Massachusetts from Cortland, N. Y. Self-rising compound flour, 309.
- Massachusetts from East Braintree, Mass. Fuel oil, petroleum, and petroleum products, 535.
- Mellette, S. Dak., from Roundup, Mont. Coal, 249 (252).
- Melrose, Oakland, Calif., from Ashland, Ohio, and Joliet, Ill. Automobile jacks, 677.
- Memphis, Tenn. Lumber; transit arrangements, 94.
- Memphis, Tenn. Lumber and forest products; milling-in-transit, 67.
- Memphis, Tenn., from Ashland, Lexington, Clemoor, McLean, Rutland, Stanford, and Wenona, Ill. Corn and oats, 265.
- Memphis, Tenn., to Carolina territory, originating in Arkansas, Oklahoma, Texas, and Louisiana. Grain and products, 19.
- Memphis, Tenn., from Fox River group, Wis. Paper and paper articles, 571.
- Memphis, Tenn., from Texas common points. Cottonseed cake and meal, 640.
- Memphis, Tenn., from various points. Paper and paper articles, 571 (587).
- Mena, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Menomonie, Wis., from St. Paul, Minn. Coke, 480.
- Mereaux, La., to Birmingham and Alabama City, Ala. Gasoline, 509.
- Meridian, Miss. Lumber; demurrage and reconsignment charges 637.
- Meridian, Miss., to and from Alabama. Class and commodity rates, 179.
- Merrillan, Wis., from St. Paul, Minn. Coke, 480.
- Mexico to Indianapolis, Ind., stored and subsequently reshipped to central and trunk line territories. Sisal, 683.

- Michigamme, Mich., from St. Paul, Minn. Coke, 480.**  
**Michigan from Arkansas and Louisiana. Lumber; transit arrangements, 94.**  
**Michigan from Fox River group, Wis. Paper and paper articles, 571.**  
**Michigan from St. Paul, Minn. Coke, 480.**  
**Michigan to Townley, N. J. Hay, 549.**  
**Michigan to various destinations. Paper and paper articles, 571.**  
**Midway, Fla., to Oklahoma City, Okla. Fuller's earth, 562.**  
**Mildred, Kans., to Kansas, Nebraska, South Dakota, Missouri, Iowa, and Wyoming. Cement, 495.**  
**Miles City, Mont., to San Francisco, Calif. Agate bowlders or pebbles, 674.**  
**Milwaukee, Wis., from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.**  
**Milwaukee, Wis., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.**  
**Minford, Ohio, from Cleveland, Ohio. Fertilizer, 615.**  
**Minneapolis, Minn., to Aberdeen, S. Dak. Coal-tar pitch and coal tar, 505.**  
**Minneapolis, Minn., from Independence, Kans., reconsigned at Sheffield, Iowa. Kerosene, 313.**  
**Minneapolis, Minn., from Indiana. Class and commodity rates, 512.**  
**Minnesota from Fox River group, Wis. Paper and paper articles, 571.**  
**Minnesota from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.**  
**Minnesota from Roundup and Geneva, Mont. Coal, 249.**  
**Minnesota to various destinations. Paper and paper articles, 571.**  
**Mississippi to central territory and other defined territories. Hardwood lumber and forest products, 68.**  
**Mississippi to Meridian, Miss., and Jackson and Chattanooga, Tenn., reconsigned to various points. Lumber, 637.**  
**Mississippi from Wood River and East St. Louis, Ill., Louisville, Ky., Baton Rouge, La., Savannah, Ga., and Jacksonville and Port Tampa, Fla. Gasoline, refined oils, lubricating oils, and petroleum products, 37.**  
**Mississippi River, points east of, from Missouri, Arkansas, Louisiana, Oklahoma, and Texas. Cottonseed and vegetable cake, meal, and oil, 640.**  
**Mississippi River cities from Missouri, Arkansas, Louisiana, Oklahoma, and Texas. Cottonseed and vegetable cake, meal, and oil, 640.**  
**Mississippi River crossings from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.**  
**Mississippi River crossings to Carolina and Atlanta territories. Grain and products, 19.**  
**Mississippi River crossings to and from Mason City, Iowa, on traffic originating at or destined to official territory. Proportional class rates, 619.**  
**Mississippi Valley from Fox River group, Wis. Paper and paper articles, 571.**  
**Mississippi Valley to various destinations. Paper and paper articles, 571.**  
**Missouri from Buhler, Kans. Flour and grain products, 613.**  
**Missouri from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.**  
**Missouri to central territory and other defined territories. Hardwood lumber and forest products, 68.**  
**Missouri from Citizens mines A and B, Springfield district, Ill. Bituminous coal, 271.**  
**Missouri to Copperhill, Tenn. Sulphuric acid sediment, 238.**  
**Missouri from International Falls, Minn., Fort Frances and Sault Ste. Marie, Ont., and Fox River group, Wis. Paper and paper articles, 571.**  
**Missouri to Kansas City, Mo.-Kans. Coal, 457.**  
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- Missouri from Kansas gas belt and Dewey, Okla. Cement, 495.
- Missouri to Mississippi and Ohio river cities, and points north and east thereof and western trunk-line territory. Cottonseed and vegetable cake, meal, and oil, 640.
- Missouri to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.
- Missouri from St. Paul, Minn. Coke, 480.
- Missouri to Salt Lake City, Ogden, and Provo, Utah. Petroleum products, 8.
- Missouri River cities from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 428.
- Mitchell, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).
- Mitchell, S. Dak., from various points. Paper and paper articles, 571 (587).
- Moberly, Mo., from various points. Paper and paper articles, 571 (587).
- Mobile, Ala., to and from Alabama. Class and commodity rates, 179.
- Mobile, Ala., from Apalachicola, Fla. Oyster shells, 763.
- Mobile, Ala., from Hamilton, Ohio, for export. Printing paper, 247.
- Moline, Ill., from St. Paul, Minn. Coke, 480.
- Montana to San Francisco, Calif. Agate bowlders or pebbles, 674.
- Montgomery, Ala., to and from Alabama. Class and commodity rates, 179.
- Monticello, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Morrilton, Ark., from Hargrove Switch and Cardwell, Mo. Cypress piling, 42.
- Morris Run, Pa., to South Brewer, Me. Bituminous coal, 159 (160).
- Moultrie, Ga. Live stock; loading and unloading, 44.
- Mount Silica, Ind., from Clinton and Brazil districts, Ind. Mine-run bituminous coal, 338.
- Muncie, Ind., from Linton group, Ind. Bituminous coal, 157.
- Muncie, Ind., to Wisconsin and Minnesota. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Munising, Mich., to Oklahoma City and Okmulgee, Okla. Paper and paper articles, 571.
- Murphy, Idaho, to and from various points. Potatoes, live stock, hay, grain, and other farm products, 330.
- Murray, Ky., to Cape Girardeau, Mo. Unmanufactured tobacco, 314.
- Muskogee, Okla., to Mississippi and Ohio river cities, and points north and east thereof, and western trunk-line territory. Cottonseed cake and meal, 640 (646).
- Muskogee, Okla., from various points. Paper and paper articles, 571 (587).
- Nashville, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Nashville, Tenn., from Tennessee and Kentucky mines. Coal, 529.
- Natchez, Miss., to and from Louisiana. Class and commodity rates, 386.
- Nebraska to Chicago, Ill., Detroit, Mich., Philadelphia, Pa., and New York, N. Y. Rabbits, 131.
- Nebraska from Colorado, Wyoming, Kansas, and Arkansas. Coal, 145.
- Nebraska from International Falls, Minn., Fort Frances and Sault Ste. Marie, Ont., and Fox River group, Wis. Paper and paper articles, 571.
- Nebraska from Kansas gas belt and Dewey, Okla. Cement, 495.
- Nebraska from St. Paul, Minn. Coke, 480.
- Nesquehoning, Pa., to South Brewer, Me. Anthracite coal, 159 (160).
- Nevada from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216.
- Newark, N. J. Lumber; milling-in-transit, 54.

- Newark, N. J., from Texas common points. Cottonseed oil, 640.
- New Castle, Ind., from Linton group, Ind. Bituminous coal, 157.
- New England. Divisions, 196.
- New England. Grain; reconsignment, 142.
- New England to and from Bay Ridge, Bath Junction, Parkville, Vanderveer Park, and East New York, N. Y. Class rates, 347.
- New England from Chicago, Ill. Pulled wool, 409.
- New England from East Braintree, Mass. Fuel oil, petroleum and petroleum products, 535.
- New England territory from La Crosse, Wis. Class rates, 371.
- New Haven, Conn. Livestock; loading and unloading, 44.
- New Jersey to Copperhill, Tenn. Sulphuric-acid sediment, 238.
- New Jersey from Cortland, N. Y. Self-rising compound flour, 309.
- New Jersey terminals to Duane Street, New York, N. Y. Fruits and vegetables, 135.
- New Mexico to and from Pacific coast points. Restricted application of group J rates, 96.
- New Orleans, La. Cotton and cotton linters; space rental charges for domestic, export, and coastwise shipments, 121.
- New Orleans, La., from Fox River group, Wis. Paper and paper articles, 571.
- New Orleans, La., to Indianapolis, Ind., stored and subsequently reshipped to central and trunk-line territories. Sisal, 683.
- New Orleans, La., to Jackson, Miss. Green coffee, 389.
- New Orleans, La., from various points. Paper and paper articles, 571 (587).
- Newport, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Newport News, Va., from Alabama, Florida, and Georgia. Wooden paving-block material, 569.
- New Richmond, Wis., from St. Paul, Minn. Coke, 480.
- New York from Arkansas and Louisiana. Lumber; transit arrangements, 94.
- New York to Copperhill, Tenn. Sulphuric-acid sediment, 238.
- New York from Cortland, N. Y. Self-raising compound flour, 309.
- New York to Townley, N. J. Hay, 549.
- New York, N. Y., from Alma, Nebr., and Norton, Rexford, St. Francis, Oberlin, and Concordia, Kans. Rabbits, 131.
- New York, N. Y., from Chicago, Ill. Pulled wool, 409.
- New York, N. Y., from Columbus, Ohio. Frozen fresh meat, 65.
- New York, N. Y., from La Crosse, Wis. Class rates, 371.
- New York, N. Y., from San Francisco, Calif. Kapok, 663.
- New York, N. Y., from Texas common points. Cottonseed oil, cake, and meal, 640.
- New York, N. Y., from Vandergrift, Pa., for export, reconsigned at Baltimore, Md. Tack plate, 661.
- New York (Duane St.), N. Y., from New Jersey terminals. Fruits and vegetables, 135.
- New York (Pier 28), N. Y., from Greenwich, N. J. Canned tomatoes, 305.
- Nicetown, Pa., to Tacoma, Wash. Steel shafting, 633.
- Norfolk, Nebr., from various points. Paper and paper articles, 571 (587).
- Norfolk, Va., from Alabama, Florida, and Georgia. Wooden paving-block material, 569.
- Norfolk, Va., from Lovelace, Ga., held at Portsmouth, Va. Lumber, 241.
- Norman, Calif., to South San Francisco, Calif. Paddy rice, 165.
- Norris, Ill., to Peoria, Ill. Bituminous coal, 624.
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- North Baton Rouge, La., to Birmingham and Alabama City, Ala. Gasoline, 509.
- North Baton Rouge, La., to Carbon Hill and Guin, Ala. Gasoline and refined oil, 274.
- North Birmingham, Ala. Switching, 255.
- North Carolina to central territory and other defined territories. Hardwood lumber and forest products, 68.
- North Carolina to Copperhill, Tenn. Sulphuric acid sediment, 238.
- North Dakota from Fox River group, Wis. Paper and paper articles, 571.
- North Dakota from Iowa and South Dakota. Corn and oats, 126.
- North Dakota from Roundup and Geneva, Mont. Coal, 249.
- North Dakota from St. Paul, Minn. Coke, 480.
- North Portland, Oreg. Livestock; loading and unloading, 44.
- Norton, Kans., to New York, N. Y., Detroit, Mich., Philadelphia, Pa., and Chicago, Ill. Rabbits, 131.
- Oakes, N. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).
- Oakland, Calif., to and from California. Grain and products, 593.
- Oakland, Calif., from transcontinental groups A, D, E, and J. Fire brick, 169.
- Oakland (Melrose), Calif., from Ashland, Ohio, and Joliet, Ill. Automobile jacks, 677.
- Oakley, Ohio, to Andrews, Ky. Scrap iron, 279.
- Oberlin, Kans., to New York, N. Y. Rabbits, 131.
- Official classification territory. Old printer's rollers and printer's roller cores; rating, 657.
- Official territory from Cortland, N. Y. Self-rising compound flour, 309.
- Official territory to and from Mason City, Iowa. Class rates, 619.
- Ogden, Utah, from California, Colorado, Kansas, Missouri, Oklahoma, and Wyoming. Petroleum products, 8.
- Ohio from Arkansas and Louisiana. Lumber; transit arrangements, 94.
- Ohio to central territory and other defined territories. Hardwood lumber and forest products, 68.
- Ohio to Copperhill, Tenn. Sulphuric acid sediment, 238.
- Ohio from Indianapolis, Ind. Cancellation of joint rates, 449.
- Ohio to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.
- Ohio to Townley, N. J. Hay, 549.
- Ohio River, points north of, from Missouri, Arkansas, Louisiana, Oklahoma, and Texas. Cottonseed and vegetable cake, meal, and oil, 640.
- Ohio River cities from Missouri, Arkansas, Louisiana, Oklahoma, and Texas. Cottonseed and vegetable cake, meal, and oil, 640.
- Ohio River crossings to Carolina and Atlanta territories. Grain and products, 19.
- Ohio River crossings from Hillsboro, Ill. Acid, 383.
- Ohio River crossings from Missouri, Arkansas, Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, Virginia, West Virginia, Tennessee, Kentucky, Indiana, and Ohio. Hardwood lumber and forest products, 68.
- Oklahoma to Brawley and Calipatria, Calif. Gasoline, 472.
- Oklahoma to Buhler, Kans., milled and the products shipped to Missouri and states east thereof. Wheat, 613.
- Oklahoma from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.

- Oklahoma to Carolina territory, via Memphis, Tenn. Grain and products, 19.
- Oklahoma from International Falls, Minn., Fort Frances, and Sault Ste. Marie, Ont., and Fox River group, Wis. Paper and paper articles, 571.
- Oklahoma to Kansas City, Mo.-Kans. Coal, 457.
- Oklahoma to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed and vegetable cake, meal, and oil, 640.
- Oklahoma to Salt Lake City, Ogden, and Provo, Utah. Petroleum products, 8.
- Oklahoma to and from Shamrock, Okla. Petroleum products and other commodities, 113.
- Oklahoma to Sioux Falls, S. Dak. Window glass, 757.
- Oklahoma City, Okla., to Carolina territory, via Memphis, Tenn. Grain and products, 19.
- Oklahoma City, Okla., from Midway, Quincy, and Ellenton, Fla. Fuller's earth, 562.
- Oklahoma City, Okla., to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed cake and meal, 640 (646).
- Oklahoma City, Okla., from St. Joseph, Mo., and Kansas City, Mo.-Kans. Hogs, 282.
- Oklahoma City, Okla., from various points. Paper and paper articles, 571.
- Okmulgee, Okla., from various points. Paper and paper articles, 571.
- Ola, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Olean, N. Y., from Hood mine, South Rivesville, W. Va. Bituminous coal, 293.
- Omaha, Nebr., from Burkburnett and Ranger groups in Texas, and from Shreveport, La. Petroleum and products, 426.
- Omaha, Nebr., from St. Paul, Minn. Coke, 480.
- Omaha, Nebr., from various points. Paper and paper articles, 571 (587).
- Orange, Mass., to Los Angeles and San Francisco, Calif., Portland, Oreg., and Seattle, Wash. Tapioca, 267.
- Orange Bend, Fla., from Tavares, Fla. Returned empty field boxes, 307.
- Orange Bend, Fla., to Tavares, Fla., for packing and reshipment. Citrus fruits, 307.
- Oregon from Alexandria, La. Hardwood lumber, 595.
- Osceola, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Oshkosh, Wis., from St. Paul, Minn. Coke, 480.
- Oskaloosa, Iowa, from Jamison, Pa. Coke, 129.
- Osyka, Miss., from Louisiana. Salt, 81.
- Owen, Wis., from St. Paul, Minn. Coke, 480.
- Pacific coast points to and from Colorado and New Mexico. Restricted application of group J rates, 96.
- Pacific coast ports to Atlantic seaboard territory. Pickled sheep skins, 415.
- Pacific coast terminals from Chicago, Ill. O-Cedar polish, mops, and mop handles, 235.
- Pacific coast terminals from Orange, Mass. Tapioca, 267.
- Packerton, Pa., to Rumford and South Brewer, Me. Anthracite coal, 159 (160).
- Paola, Fla., to Tavares, Fla., for packing and reshipment. Citrus fruit, 307.
- Paola, Fla., from Tavares, Fla. Returned empty field boxes, 307.
- Paris, Tenn., to Cincinnati, Ohio. Sweet potatoes, 175.
- Parkersburg, W. Va., from Wilmington, Del. Feldspar, 681.
- Park Falls, Wis., from St. Paul, Minn. Coke, 480.
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- Parkin, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Parkville, N. Y., to and from New York, New Haven & Hartford R. R. points. Class rates, 347.
- Passaic, N. J., from Boston and East Boston, Mass. Wool in the grease, 556.
- Pawnee, Ill., to Peoria, Ill. Bituminous coal, 624.
- Pennsylvania from Arkansas and Louisiana. Lumber; transit arrangements, 94.
- Pennsylvania to Copperhill, Tenn. Sulphuric acid sediment, 238.
- Pennsylvania from Cortland, N. Y. Self-rising compound flour, 309.
- Pennsylvania to St. Louis, Mo., there sacked and forwarded to western trunk line, trans-Missouri, and southwestern lines territories. Smithing coal, 147.
- Pennsylvania mines to Rumford and South Brewer, Me. Bituminous and anthracite coal, 159.
- Pennsylvania mines to Woodbury, N. J. Coal, 490.
- Peoria, Ill., from Springfield district, and Peoria county and Bulton county groups, Ill. Bituminous coal, 624.
- Peoria, Ill., from various points. Paper and paper articles, 571 (587).
- Peoria county group, Ill., to Peoria, Ill. Bituminous coal, 624.
- Petersburg, Va., from Detroit, Mich. Salt, 441.
- Philadelphia, Pa. (Port Richmond to Frankford). Imported nitrate of soda, 381.
- Philadelphia, Pa., from Chicago, Ill. Pulled wool, 409.
- Philadelphia, Pa., from Norton, Kans. Rabbits, 131.
- Philadelphia, Pa., from Texas common points. Cottonseed cake and meal, 640.
- Philadelphia, Pa., from Vandergrift, Pa., for export, reconsigned at Baltimore, Md. Tack plate, 661.
- Pier 28, New York, N. Y., from Greenwich, N. J. Canned tomatoes, 305.
- Pierre, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).
- Pierre, S. Dak., from various points. Paper and paper articles, 571 (587).
- Pig Point, Va., from Alabama, Florida, and Georgia. Wooden paving-block material, 569.
- Pine Bluff, Ark., to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed cake and meal, 640 (646).
- Ploche, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Pipestone, Minn., from Weed and Westwood, Calif., and Klamath Falls, Oreg. Lumber, 109.
- Pittsburg, Calif., from transcontinental groups, A, D, E, and J. Fire brick, 169.
- Pittsburgh, Pa., from First Ford, Va. Manganese ore, 421.
- Pittsburgh, Pa., from Missouri, Arkansas, Louisiana, Oklahoma, and Texas. Cottonseed and vegetable cake, meal, and oil, 640.
- Pittsburgh district, Pa., to Kent, Wash. Tin plate; demurrage, 553.
- Portage, Wis., from St. Paul, Minn. Coke, 480.
- Port Colborne, Ont., to Constable Hook and Chrome, N. J. Blister copper, 627.
- Port Henry, N. Y., to various destination. Iron ore; water-and-rail, 311.
- Port Huron, Mich., to Oklahoma City, Okla. Building and roofing paper, 571 (585).
- Portland, Oreg., from Camden, N. J., Buffalo, N. Y., and Gary, Ind. Steel shaftings, 633.

- Portland, Oreg., to and from Colorado and New Mexico. Restricted applicable of group J rates, 96.
- Portland, Oreg., from Orange, Mass. Tapioca, 267.
- Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, Pa. Imported nitrate of soda, 381.
- Portsmouth, Va. Lumber; demurrage, 241.
- Portsmouth, Va., from Alabama, Florida, and Georgia. Wooden paving-block material, 569.
- Port Tampa, Fla., to Kentucky, Mississippi, Alabama, Georgia, and Florida. Gasoline, refined oils, lubricating oils, and petroleum products, 37.
- Pottstown, Ill., to Peoria, Ill. Bituminous coal, 624.
- Pottstown, Pa., to San Francisco, Calif., for export. Pig iron, 261.
- Poughkeepsie, N. Y. Constructive mileage, 230.
- Prentice, Wis., from St. Paul, Minn. Coke, 480.
- Prescott, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Preston, La., to Eastland, Tex. Lumber, 297.
- Providence, R. I., from Coleman, Fla. Cabbage, 300.
- Providence, R. I., from Texas common points. Cottonseed oil, 640.
- Provo, Utah, from California, Colorado, Kansas, Missouri, Oklahoma, and Wyoming. Petroleum products, 8.
- Quay, Okla., from Shamrock, Okla. Iron pipe, 113.
- Quincy, Fla., to Oklahoma City, Okla. Fuller's earth, 562.
- Racine, Wis., from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.
- Ramsay, Mont., from Tacoma, Wash. Nitrate of soda, 501.
- Ranger, Tex., to Duncan, Tulsa, and Walters, Okla. Yellow-pine lumber, 327.
- Ranger, Tex., from Logansport, La. Lumber, 297.
- Ranger, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory. Petroleum and products, 426.
- Ranger group, Tex., to Oklahoma, Kansas, Missouri, Missouri River cities, Mississippi River crossings, Chicago, Ill., and western trunk line territory. Petroleum and products, 426.
- Red Bank, Ohio, to Andrews, Ky. Scrap iron, 279.
- Redfield, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).
- Red Oak, Iowa, from Douglas, W. Va. Smithing Coal, 129.
- Relee, Va., from Texas common points. Cottonseed oil, 640.
- Reno, Nev., from Castle Gate District, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Republic, Ga., to Chicago Heights, Ill. Bauxite ore, 443.
- Rexford, Kans., to New York, N. Y., and Chicago, Ill. Rabbits, 131.
- Reynoldsville, Pa., to Rumford, Me. Bituminous coal, 159 (160).
- Rhineland, Wis., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Rhinlander, Wis., from St. Paul, Minn. Coke, 480.
- Rhode Island from East Braintree, Mass. Fuel oil, petroleum, and petroleum products, 535.
- Rice Lake, Wis., from St. Paul, Minn. Coke, 480.
- Richmond, S. Dak., from Roundup, Mont. Coal, 249 (252).
- Richmond, Va., from Detroit, Mich. Salt, 441.
- Richmond, Va., from Texas common points. Cottonseed cake and meal, 640.
- Ripon, Wis., from St. Paul, Minn. Coke, 480.



- Roach, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (227).
- Roanoke, Va., from Detroit, Mich. Salt, 441.
- Rockland Me., from Boston, Gloucester, Worcester, Fitchburg, and Clinton, Mass. Iron and steel articles, 100.
- Rock River, Wyo., to Salt Lake City, Utah. Petroleum products, 8.
- Rock Springs, Wyo., to Nevada. Coal, 216.
- Rogers, Ark., from St. Louis and Kansas City, Mo., and Cairo and Thebes, Ill. Grain and products, 475.
- Rosebud, Mont., to San Francisco, Calif. Agate bowlders or pebbles, 674.
- Roundup, Mont., to North Dakota, South Dakota, and Minnesota. Coal, 249.
- Rumford, Me., from Pennsylvania mines and Fairmont, W. Va. Bituminous and anthracite coal, 159.
- Ruth, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Rutland, Ill., to Memphis, Tenn. Corn and oats, 235.
- St. Francis, Kans., to New York, N. Y. Rabbits, 181.
- St. Joseph, Mo., from Denver, Colo. Green salted sheep pelts, and green salted hides, 33.
- St. Joseph, Mo., to Oklahoma City, Okla. Hogs, 282.
- St. Louis, Mo. Live stock; loading and unloading, 44.
- St. Louis, Mo., to Arkansas. Grain and products, 475.
- St. Louis, Mo., from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.
- St. Louis, Mo., to Fort Worth, Tex. Auto-body woodwork, 617.
- St. Louis, Mo., from Louisiana. Salt, 81.
- St. Louis, Mo., to Oklahoma City and Okmulgee, Okla., and Wichita, Kans. Paper and paper articles, 571.
- St. Louis, Mo., to St. Paul and Duluth, Minn. Creosote and gas-tar oils, 1.
- St. Louis, Mo., to Springfield, Ill. Steel rails, 151.
- St. Louis, Mo., from Texas common points. Cottonseed cake and meal, 640.
- St. Louis, Mo., from various points. Paper and paper articles, 571 (587).
- St. Louis, Mo., from West Virginia and Pennsylvania, sacked and forwarded to western trunk line, trans-Missouri, and southwestern lines territories. Smithing coal, 147.
- St. Paul, Minn., from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.
- St. Paul, Minn., from Chicago, Ill., and St. Louis, Mo. Creosote and gas-tar oils, 1.
- St. Paul, Minn., from Indiana. Class and commodity rates, 512.
- St. Paul, Minn., to Michigan, Wisconsin, Illinois, Iowa, Missouri, North Dakota, South Dakota, Kansas, and Nebraska. Coke, 480.
- St. Paul, Minn., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- St. Paul, Minn., from various points. Paper and paper articles, 571 (587).
- Salem, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).
- Salina, Kans., from various points. Paper and paper articles, 571 (587).
- Salt Lake City, Utah, from California, Colorado, Kansas, Missouri, Oklahoma, any Wyoming. Petroleum products, 8.
- Salt Mine, La., to Chicago, Ill., St. Louis, Mo., and other points. Salt, 81.
- San Francisco, Calif., to Atlantic seaboard territory. Pickled sheep skins, 415.
- San Francisco, Calif., to Chicago, Ill., New York, N. Y., and Boston, Mass. Kapok, 663.

- San Francisco, Calif., from Montana. Agate bowlders or pebbles, 674.
- San Francisco, Calif., from Orange, Mass. Tapioca, 267.
- San Francisco, Calif., from Pottstown, Pa., for export. Pig iron, 261.
- San Francisco, Calif., to Salt Lake City, Utah. Petroleum products, 8.
- San Francisco, Calif., from transcontinental groups A, D, E, and J. Fire brick, 169.
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- Sioux City, Iowa, from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.
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- Sioux Falls, S. Dak., from Kansas and Oklahoma. Window glass, 757.
- Sioux Falls, S. Dak., from Roundup and Geneva, Mont. Coal, 249 (254).
- Sioux Falls, S. Dak., from St. Paul, Minn. Coke, 480.
- Sioux Falls, S. Dak., from various points. Paper and paper articles, 571 (587).
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- South Dakota from Kansas gas belt and Dewey, Okla. Cement, 495.
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- South Dakota from St. Paul, Minn. Coke, 480.
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- Texas to Carolina territory, via Memphis, Tenn. Grain and products, 19.
- Texas to central territory and other defined territories. Hardwood lumber and forest products, 68.
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- Texas to Mississippi and Ohio river cities, and points north and east thereof, and western trunk line territory. Cottonseed and vegetable cake, meal, and oil, 640.
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- Ward, Ala., to and from Mobile, Ala., and Meridian, Miss. Class and commodity rates, 179 (193).
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- Watertown, S. Dak., from Roundup, Mont. Coal, 249 (252).  
 Watertown, S. Dak., from St. Paul, Minn. Coke, 480.  
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 Webak, Oreg., from Tacoma, Wash. Wooden pipe, 155.  
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 Wichita, Kans., from Gould and Hollis, Okla., and Dodsonville and Wellington, Tex. Live stock, 591.  
 Wichita, Kans., from various points. Paper and paper articles 571.  
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- Williams, Okla., to Kansas City, Mo. Coal, 588.
- Willmar, Minn., from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.
- Wilmington, Calif., to Salt Lake City, Utah. Petroleum products, 8.
- Wilmington, Del., to Parkersburg, W. Va. Feldspar, 681.
- Winchester, Ind., from Linton group, Ind. Bituminous coal, 157.
- Winnemucca, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).
- Winnipeg, Manitoba, from Burkburnett and Ranger groups in Texas and from Shreveport, La. Petroleum and products, 426.
- Winona, Minn., from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Wisconsin to Copperhill, Tenn. Sulphuric acid sediment, 238.
- Wisconsin from Fox River group, Wis. Paper and paper articles, 571.
- Wisconsin from Muncie, Ind. Fruit jars, fruit-jar tops, and jelly glasses, 523.
- Wisconsin from St. Paul, Minn. Coke, 480.
- Wisconsin to Townley, N. J. Hay, 549.
- Wisconsin to various destinations. Paper and paper articles, 571.
- Wolsey, S. Dak., from Roundup, Mont. Coal, 249 (252).
- Woodbury, N. J., to and from various points. Class and commodity rates, 490.
- Woodmount, Md., to Cincinnati, Ohio. Peaches, 175.
- Wood River, Ill., to Kentucky, Mississippi, Alabama, Georgia, and Florida. Gasoline, refined oils, lubricating oils, and petroleum products, 37.
- Worcester, Mass. Live stock: loading and unloading, 44.
- Worcester, Mass., to Maine Central R. R. points. Iron and steel articles, 100.
- Wyoming to Iowa and Nebraska. Coal, 145.
- Wyoming from Kansas gas belt and Dewey, Okla. Cement, 495.
- Wyoming to Salt Lake City, Ogden, and Provo, Utah. Petroleum products, 8.
- Wyoming mines to Nevada. Coal, 216.
- Yankton, S. Dak., from Roundup, Mont. Coal, 249 (252).
- Yerington, Nev., from Castle Gate district, Utah, and Rock Springs, Wyo. Coal, 216 (219).

## INDEX DIGEST.

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[Numbers in parentheses indicate pages on which subjects are considered.]

### ABSORPTION. *See also* SWITCHING.

Where carrier was not under federal control, its absorption provisions on intrastate traffic were not subject to the Commission's jurisdiction during the federal control period. *Citizens Coal Mining Co. v. Director General, as Agent*, 271 (273).

### ACTIONS.

Fact that one company may be a subsidiary of another does not *ipso facto* entitle the latter to bring an action in its own name for damages suffered by the former. *American Agricultural Chemical Co. v. Director General, as Agent*, 650 (651).

### ACTUAL WEIGHT. *See* WEIGHT.

### ADDITIONAL CHARGE.

Charges in addition to the line-haul charges for unloading and reloading en route ordinary live stock destined to private stockyards adjacent to packing plants of complainants, while unloading and reloading such shipments destined to public stockyards, without charge in addition to line-haul charges, found to result in undue prejudice to complainant in favor of competitors whose plants are adjacent to public stockyards. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44.

Collection at transit point of switching charges of a belt line which delivered shipments to complainant for storage, and to outbound carriers for movement to final destination, and which were in addition to the through rate and transit charges, found illegal. Shipments moving from a point of origin to final destination under transit arrangements are regarded as moving under a single continuous contract of carriage. Reparation awarded. *Capital Warehouse Co. v. Director General, as Agent*, 683.

### ADJACENT FOREIGN COUNTRY. *See also* CANADA.

The Commission's territorial jurisdiction carries up to the international boundary line, at which that of Congress itself halts, and as to foreign commerce is thus coextensive with that of the federal government. No act of Congress has force of law beyond that boundary line, but up to it, as everywhere else within the United States the interstate commerce act has full effect, just as the federal control act had effect when these shipments moved. *International Nickel Co. v. Director General, as Agent*, 627 (629).

### ADJUSTMENT OF RATES. *See also* RELATIONSHIP OF RATES.

Carriers established the 4.5 cent increase in lieu of 25 per cent on petroleum and products under general order No. 28 of the Director General, within western territory, and from that territory to the southeast. Failure to establish a like adjustment to southeastern destinations from Wood River and East St. Louis, Ill., and between points within the southeast until tariffs could be published establishing rates reflecting the 4.5 cent increase for both federal and nonfederal roads, found not to have resulted in unreasonable rates on shipments moving during interim. *Standard Oil Co. v. Director General, as Agent*, 37.



## ADJUSTMENT OF RATES—Continued.

Increases applied under *Increased Rates, 1920*, 58 I. C. C., 220, on lumber and forest products from various states south of the Ohio River to c. f. a. and other defined territories, disturbed the relationship formerly existing between northern and southern producing points to common markets, and attributed to a general depression in the lumber industry. Rates so increased found unreasonable for the future and reasonable basis bearing a closer relationship to that which existed prior to the increases prescribed. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68.

Rates on coal prescribed in original report, 62 I. C. C., 686, for the removal of undue prejudice could not be established without violating the long-and-short-haul rule of the fourth section. Upon further hearing original findings modified to extent of permitting the establishment and maintenance of a specific rate satisfactory to complainant and which would avoid such departure. *West Kentucky Coal Bureau v. I. C. R. R. Co.*, 228.

Rates on green coffee from New Orleans, La., to Jackson, Miss., found not unreasonable prior to January 28, 1920, on which date such rates were revised to remove a disparity and restore a relationship which was disrupted by the increases of the Director General under general order No. 28. Such rates were not, distance considered, above the general level of rates to points in Mississippi. Rates on and after January 28 found unreasonable. Reasonable rates prescribed and reparation awarded. *MacGowan Coffee Co. v. I. C. R. R. Co.*, 389.

Rate structure on petroleum and its products from the Burkburnett and Ranger groups in Texas and from Shreveport, La., to Kansas City and St. Louis, Mo., found unreasonable and reasonable maximum rates prescribed. *Western Petroleum Refiners Asso. v. Director General*, 426.

Rates on cement from points in the Kansas gas belt and from Dewey, Okla., to points in Nebraska, South Dakota, Wyoming, Iowa, and Missouri found unreasonable. Carriers failed to comply with the original order in the *Cement Investigation*, 48 I. C. C., 201, and as a result of the supplemental proceeding in 52 I. C. C., 225 they were revised, such revision involving a reduction in the rates. Reparation awarded. *Iola Cement Mills Traffic Asso. v. Director General, as Agent*, 495.

Rates on gasoline, in tank-car loads, as originally increased 25 per cent under general order No. 28 of the Director General, found not unreasonable as compared with lower rate subsequently established when such rates were readjusted by the substitution of a flat 4.5 cent increase in lieu of 25 per cent. *Wofford Oil Co. v. Director General, as Agent*, 509.

Class and commodity rates from points in Indiana to St. Paul and Minneapolis, Minn., found unreasonable and unduly prejudicial to extent that they exceed the rates in effect from Illinois points and west-bank Mississippi River points in Iowa and Missouri for approximately equal distances. *Public Service Commission of Indiana v. A., T. & S. F. Ry. Co.*, 512.

**ADJUSTMENT OF RATES—Continued.**

Rates on bituminous coal from mines in the Springfield district, and in the Peoria and Fulton county groups, in Illinois, to Peoria, Ill., during federal control, found not unreasonable as they compare favorably with numerous rates on coal for comparable distances between points in the same territory. The fact that such rates were not established in strict conformity with the provisions of general order No. 28 of the Director General is insufficient in itself to support a finding of unreasonableness. *Central Illinois Light Co. v. Director General*, as Agent, 623.

Due to the application of increases under general order No. 28 of the Director General, the differential relationship of rates on bituminous coal from group mines in Indiana and Illinois to Chicago, Ill., disrupted. Subsequently preexisting relationship restored. *Held*: Failure to observe the terms of that order, filed with the Commission by the President through his duly appointed agent, does not prove that the rates established thereunder were unreasonable. *Carney v. Director General*, as Agent, 671.

**ADMINISTRATIVE RULINGS.** See **CONFERENCE RULINGS; RULES OF PRACTICE; TARIFF CIRCULAR 18-A.**

**ADVANCE IN RATES.** See also **DOUBLE INCREASE.**

In General:

The Commission has required the cancellation of suspended schedules because of threatened violations of the long-and-short-haul provision of the fourth section of the act. Salt from Louisiana Mines to Chicago, 81 (91).

A charge, reasonable in its inception many years ago, may become unreasonably low in consequence of the construction of more adequate facilities, a change in the character of the service rendered, the increased level of operating costs generally, or one or more of these factors. But the existence of such general conditions alone affords no proper basis upon which to test the reasonableness of a specific material increase in charges. Space Rental Charges on Cotton, 121 (125).

The group plan of increasing rates followed in *Increased Rates, 1920*, 58 I. C. C., 220, necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned, and due regard for the public interest demands that the Commission give these fortuitous inequalities consideration in the fixing of divisions. *New England Divisions*, 196 (199).

It is inevitable that when freight rates are increased the carrier that brings its fuel and other supplies from a distance will suffer disproportionately. *Id.* (200).

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## ADVANCE IN RATES—Continued.

## In General—Continued.

Prior to the increases the line haul rates did not cover the movement of cars by defendants between interchange tracks and spotting points within plants. Contention that this was under an agreement that complainants should make these movements at their own expense because of the low basis of rates accorded them, and that the successive increases made under general order No. 28 and *Increased Rates, 1920*, 58 I. C. C., 220, have made the rates so high that defendants should therefore render the service, *Held*: This position is untenable. *Gulf States Steel Co. v. Director General*, as Agent, 255 (257).

Whether the resulting rate was unreasonable or otherwise unlawful is the controlling fact to be determined in passing upon increases promulgated under general order No. 28 of the Director General, and not whether a rate was increased in strict compliance with the terms or the intention of that order. *Citizens Coal Mining Co. v. Director General*, as Agent, 271 (272).

Proposed cancellation of joint rates from Indianapolis, Ind., over the Terre Haute, Indianapolis & Eastern Traction Co. and the Dayton & Western Traction Co. to points on the Indiana, Columbus & Eastern Traction Co. east of Dayton, Ohio, and connecting lines; and proposed cancellation of joint rates from points on the Interstate Public Service Co. and connecting lines to points on the Indiana, Columbus & Eastern Traction Co. and points beyond; which will result in the application of higher combinations, found not justified. *Rate Cancellation from Indiana to Ohio*, 449.

In cases arising out of federal control neither the percentage nor the amount by which a rate was increased under general order No. 28 or other freight rate authorities of the Director General, constitutes proof of unreasonableness. Any general increase necessarily disturbs preexisting rates, either by varying amounts, if it be a percentage increase, or by varying percentages, if it be a flat increase. *Wofford Oil Co. v. Director General*, as Agent, 509 (510).

*Acid*: Findings in original report, 60 I. C. C., 583, that increases in rates on acid from Hillsboro, Ill., to certain Ohio River crossings were justified, modified on further hearing. Increased rates found to be no longer justified as rates from Hillsboro are no longer on the basis generally in effect in this part of c. f. a. territory and the rates from Copperhill, Tenn., to Cincinnati, Ohio, have the effect of eliminating Hillsboro from that market. *Acid from Hillsboro to Ohio River Points*, 383.

*Class and commodity rates*: Between Meridian, Miss., Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., on the one hand, and certain points in Alabama within 200 miles of Meridian, on the other, proposed in compliance with the Commission's order in *Meridian Traffic Bureau*, 60 I. C. C., 5, for removal of undue prejudice found to exist against Meridian, found justified in some instances and not in others. Reasonable maximum distance scales prescribed. *Meridian Rate Case*, 179.

*Class rates*: Proposed cancellation of joint class rates between New York, New Haven & Hartford stations and Bay Ridge, Bath Junction, Parkville, Vanderveer Park, and East New York, N. Y., leaving in effect higher combination rates, found not justified. *Rate Cancellations, New Haven Stations and Long Island*, 347.

## ADVANCE IN RATES—Continued.

Coal: Proposed schedules by which the application of through rates on coal from mines on the Western Maryland in connection with the B. & O., to eastern destinations would be restricted to the route via Cumberland, Md., filed against the express wishes of the originating carrier and which would operate to deprive it of its long haul, found not justified. Routing on Coal from Western Maryland Ry. Mines, 103.

Coal, bituminous: Increases under general order No. 28 of Director General on, from Linton group in southwestern Indiana to destinations northeast of Indianapolis, Ind., during federal control, resulted in widening the differential to such points over Indianapolis which existed prior to such increases. Subsequently rates reduced but former differential not restored. *Held*: Neither Director General's departure from terms of his general orders nor the subsequent reduction of rates is necessarily proof that rates were unreasonable. *Union Traction Co. of Indiana v. Director General*, as Agent, 157.

Cotton seed and other vegetable cakes and meals: Proposed increased rates on, from the southwest to certain Mississippi and Ohio River crossings and points north and east thereof, found not justified. Cottonseed Cake from Southwest, 640.

Cottonseed products: Proposed increased rates on, from the southwest to certain points in western territory, found justified. Cottonseed Cake from Southwest, 640.

Distance rates: Proposal to add 100 constructive miles for crossing the Hudson River by bridge at Poughkeepsie, N. Y., found not justified. Whether resulting rates would be reasonable or unreasonable or what revenue would accrue are matters of speculation; competitive and other conditions would have to be considered in connection with each rate; and the extent to which such constructive mileage would be used is impossible of determination at the present time. The Commission is not warranted in giving approval to a proposal so vague, indefinite, and uncertain in its effect. Constructive Mileage over Poughkeepsie Bridge, 230.

Fruits and vegetables: Proposed increase in proportional rates on, from New Jersey terminals of the Erie R. R. to Duane street, New York, N. Y., found justified in part; but establishment of terminal charges in addition to line-haul rates on such traffic delivered to Duane street, found not justified. Fruits and Vegetables to Duane St., N. Y., 135.

Glass, window: Proposed increased rate on, from Kansas and Oklahoma points to Sioux Falls, S. Dak., which would disturb the long standing spread between the rates to Sioux Falls and practically every other related point, found not justified. Window Glass from Kansas and Oklahoma to Sioux Falls, 757.

Grain and products: Proposed increased rates on, c. l. and l. c. l., from Memphis, Tenn., to Carolina territory, when originating in Arkansas, Oklahoma, Texas, and Louisiana, which will equalize the rates from the southwest when moving through Memphis with those from so-called equalization territory when moving through gateways north of Memphis, found justified. Grain and Grain Products from Memphis, 19.

Import rates: It is not to be assumed that an increase of 25 per cent under general order No. 28 of the Director General in relatively low import rates would operate to make them reasonable maximum rates. *Dutton Co. v. Director General*, as Agent, 663.

## ADVANCE IN RATES—Continued.

Iron and steel articles: Proposal to cancel the l. c. l. commodity rates on, from Boston, Mass., and other points to destinations on the Maine Central, thereby making applicable higher class rates, found not justified. Proposed rates would result in violations of the fourth section of the act and would widen the disparity in rates already existing between Boston and competing points. Iron and Steel Articles from Boston, 100.

## Lumber:

There is merit in the contention that because of the relatively long haul of hardwood lumber from southern points to consuming points in central and eastern trunk line territories, the percentage increase authorized under *Increased Rates, 1920*, 58 I. C. C., 220, has had a peculiarly disturbing effect upon the lumber business. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68 (74).

In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, order of Commission suspending schedules under which carriers propose to withdraw existing transit arrangements on lumber moving via Memphis, Tenn., or Louisville, Ky., from points on the Rock Island in Arkansas and Louisiana, to various northern points, vacated. Transit Privileges on Lumber, 94.

Lumber and forest products: Proposal to withdraw from participation in joint commodity rates on, from Hawley and Truckee group points in California and Nevada to interstate destinations because of unsatisfactory divisions, or to increase such joint rates to the coast group basis which would bring about violations of the long-and-short-haul provision of section 4 of the act, found not justified. Routing Restrictions on Lumber, 56.

Oil, cottonseed: Proposed increased rates on, from the southwest to certain Mississippi and Ohio river crossings and points north and east thereof, found not justified. Cottonseed Cake from Southwest, 640.

Oils, creosote and gas-tar: Proposal to increase the rates on, from Chicago, Ill., and St. Louis, Mo., to St. Paul and Duluth, Minn., to the level of the southbound rates between the same points, found justified. Creosote and Gas-Tar Oils from Chicago, 1.

Paving-block material, wooden: Proposed cancellation of specific rates on, from points in Alabama, Florida, and Georgia to Norfolk, Va., and other points, and to substitute therefor the prevailing lumber rates which are higher, found justified as there is no substantial difference from a transportation standpoint between paving-block material and other lumber. Cancellation of Rates on Wooden Paving-Block Material, 569.

Salt: Proposed rate on, minimum 80,000 pounds, from mines in Louisiana to Chicago, Ill., St. Louis, Mo., and intermediate main line points on the Illinois Central and Yazoo & Mississippi Valley, which would result in violations of the long-and-short-haul provision of the fourth section of the act and result in undue prejudice to Indianapolis, Ind., found unlawful. Salt from Louisiana Mines to Chicago, 81.

Space rental charges: Proposed increased "space rental" charges on domestic, export, and coastwise shipments of cotton and cotton linters at New Orleans, La., and subports, found not justified as the general level of charges on all commodities handled in domestic, export, import, or coastwise traffic is not only lower than the level of charges proposed, but is lower than the level of the present charges. Space Rental Charges on Cotton, 121.

**ADVANTAGES AND DISADVANTAGES.** *See also* LOCATION.

Commercial advantages and disadvantages arising from variations in costs of production are not factors that can have any great consideration by the Commission in reaching conclusions as to the propriety of rate structures. *Standard Oil Co. v. Director General*, as Agent, 37 (40).

**AFFIDAVIT.**

In complying with Rule V of the Commission's Rules of Practice, complainants authorized to submit proof in the form of affidavits that freight charges were paid and borne by them. Carriers do not object to this form of proof. *Boston Chamber of Commerce v. Director General*, as Agent, 142 (144).

**AGENT.**

Carrier's agent billed shipments to wrong destination and teamster, employed by complainant to load cars only, accepted and signed the bills of lading. *Held*: As authority not delegated to teamster to direct the movement of the cars the acceptance and signing of the bills of lading by him did not bind complainant. Shipments found misrouted and reparation awarded. *Phoenix Refining Co. v. A., T. & S. F. Ry. Co.*, 303.

Negligence can not be imputed to carrier's agent for failure to divert shipment before arrival at originally billed destination where only information shown in reconsignment order was car number and initial and that car was in transit to shipper at original destination. Shipper failed to give point of origin, route of movement, commodity, or any other information, and made no request to protect the through rate. *Held*: Facts sufficient to justify agent in holding the order until arrival of the car and executing the instructions of the shipper at that time. *Reeves Coal & Dock Co. v. Director General*, as Agent, 460.

Complainant, a commission company, sought reparation as agent for individual shippers named in the complaint. Whereabouts of some complainants unknown, one is deceased, and his claim is not listed as an asset of his estate and his administrator declines to take cognizance of it, and the remainder have filed requests for dismissal. *Held*: Complainants' agency to make claim for reparation not sufficiently established. *Hyre-Price Live Stock Commission Co. v. M., K. & T. Ry. Co.*, 591.

**AGGREGATE OF INTERMEDIATES.** *See* THROUGH AND LOCAL**AGREEMENTS.** *See also* CONTRACTS.

Tariff rule, defining railroad premises to embrace private tracks constructed, maintained, or operated under a written agreement by which carrier reserves the right to use such tracks for itself or others, makes the written agreement the controlling factor rather than the right to use such tracks. *Western Petroleum Refiners Asso. v. A. & R. R. Co.*, 58 (60).

Proposed rule under which shipper is required to execute agreement for stoppage of goods in transitu, and where shipper is unknown or irresponsible, the agent must require one or more sureties to sign with him, found not justified. Such rule indefinite as to number of sureties required, reposes too much arbitrary power in agents to decide who is or is not "responsible," compliance therewith might require considerable time and result in loss of right to stop because of delivery at destination, and, terms of agreement are inconsistent with recognition by respondent of any duty to obey the order to stop. *Stoppage of Goods in Transit*, 423.

# AGREEMENTS—Continued.

Complainant based allegation of unlawfulness upon contention that defendant assured it that rate would be established to point where complainant moved its plant, which was lower than the rate to point where such plant was formerly located. *Held*: Such an agreement affords no basis for condemning the rate assailed. *General Porcelain Co. v. Director General, as Agent*, 681.

## ALLOWANCES.

Refusal of carriers to unload ordinary live stock from their cars into stock pens adjacent to packing plants of complainants, or to make an allowance for unloading such shipments, while, pursuant to section 15, paragraph (5) of the act, performing the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge in addition to line-haul charges, not shown to violate the act. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.* 44.

Failure of defendants to move inbound and outbound cars between interchange tracks and points within complainant's plants under the line-haul rates, or to compensate complainants therefor, found not to result in unreasonable, discriminatory, or unduly prejudicial charges. Complainants would not accept placement within their plants at defendants' convenience; the practice has been to deliver and receive the traffic at the interchange tracks; and complainants are accorded the same treatment as their competitors in the same district. *Gulf States Steel Co. v. Director General, as Agent*, 255.

Contention that the right of a shipper to receive an allowance for services rendered in connection with the transportation of property owned by him is not limited by section 15 of the act to those services which the carrier can perform, or can be required to perform, under its contract of transportation. *Held*: In the absence of undue prejudice a carrier can not be required to compensate a shipper for services that it is not the duty of the carrier to perform, or for services which, because of conditions at the shipper's plant, it can not reasonably be required to perform. *Id.* (258).

## AMBIGUOUS TARIFF.

"Space rental" charges found, in fact, to be charges for storage, and ambiguities in tariffs giving color to a distinction between charges for "storage" and charges for "space rental" should be eliminated. *Space Rental Charges on Cotton*, 121 (123).

## AMENDMENT OF COMPLAINT.

After complaint was filed, powers of attorney were executed by certain consignors, who were not named as parties in the complaint, in favor of a complainant who was so named. *Held*: Introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint, and since such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied. *Tanners' Council v. Director General, as Agent*, 415 (419).

## ANALOGOUS ARTICLES. *See* COMPARATIVE RATES.

## ANY QUANTITY RATES. *See* LESS-THAN-CARLOADS.

**ARBITRARIES.** *See also DIFFERENTIALS.*

Rates on petroleum products and other commodities, c. l. and l. c. l., between Shamrock and certain other points in Oklahoma, during federal control, found unreasonable to extent that the rates on traffic interchanged between the Sapulpa & Oil Field, and Frisco railroads exceeded the single-line distance rates applicable in Oklahoma, and on traffic moving over those lines and the lines of other carriers, to extent they exceeded the single line rates plus two line arbitraries. Reparation awarded. *Cosden & Co. v. Director General, as Agent*, 113.

**ASSIGNMENT.**

After complaint was filed, powers of attorney were executed by certain consignors, who were not named as parties in the complaint, in favor of a complainant who was so named. *Held*: Introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint, and since such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied. *Tanners' Council v. Director General, as Agent*, 415 (419).

**BEAVER VALLEY RAILROAD.**

History and description. *Beaver Sand Co. v. Director General, as Agent*, 285 (286-287).

Found to be a common carrier subject to the act. *Id.* (287).

**BILL OF LADING.**

Upon petition for modification of the Commission's report in 64 I. C. C., 357, service of which was made in compliance with rule XV of the Rules of Practice and to which no objections have been raised, rules and regulations prescribing forms of uniform domestic bill of lading and uniform live stock contract so as to eliminate doubt as to the liability of the consignee for charges and remove any opportunity for confusion, approved. Domestic Bill of Lading and Live Stock Contract, 63.

Upon further hearing, certain conditions in the through export bill of lading, heretofore prescribed by the Commission in 64 I. C. C., 347, modified in certain particulars upon recommendations made by the United States Shipping Board. Export Bill of Lading, 687.

**BLANKET RATES.** *See also GROUP RATES.*

Class rates on lumber from Preston and Logansport, La., to Eastland and Ranger, Tex., found unreasonable to extent they exceeded lower blanket commodity rate in effect between points in this territory for joint line hauls of the same or greater distances, which lower rate was subsequently established between the points here involved. Reparation awarded. *Weaver Bros. Lumber Co. v. Director General, as Agent*, 297. Maintenance of blanket rates from and to Nampa, Emmett, and Boise, Idaho, lower than the rates on like traffic from and to points on the Murphy and Wilder branches of the Oregon Short Line, found to result in undue prejudice against the points on such branches and in undue preference of Nampa, Emmett, and Boise, to the extent of the difference in such rates. *State of Idaho, ex rel v. Director General*, 330.

When points distributed over an extensive area are grouped and a blanket rate applied to or from all such points, the fact that points lying within that blanket are on a branch line does not argue as strongly that there should be a branch-line differential as when the rates are applied upon a graded basis. Whether or not there should be such a differential in connection with blanket rates depends in a large measure upon how extensive the blanket is. *Id.* (336-337).



**BLANKET RATES—Continued.**

In an extensive blanket a branch-line haul of 30 miles loses its significance unless it is made to appear that the branch-line operation is much more expensive than main-line operations from remoter parts of the blanket. *Id.* (337).

**BOAT LINES.** See **WATER CARRIERS.**

**BOND.**

Proposed rule under which shipper is required to execute agreement for stoppage of goods in transitu, and where shipper is unknown or irresponsible, the agent must require one or more sureties to sign with him, found not justified. Such rule indefinite as to number of sureties required, reposes too much arbitrary power in agents to decide who is or is not "responsible," compliance therewith might require considerable time and result in loss of right to stop because of delivery at destination, and terms of agreement are inconsistent with recognition by respondent of any duty to obey the order to stop. *Stoppage of Goods in Transit*, 423.

**BOTH DIRECTIONS.**

Proposal to increase the rates on creosote oil and gas-tar oil from Chicago, Ill., and St. Louis, Mo., to St. Paul and Duluth, Minn., to the level of the southbound rates between the same points, found justified. *Creosote and Gas-Tar Oils from Chicago*, 1.

Upon further hearing, finding in *The Wisconsin Rate Cases*, 44 I. C. C., 602, adhered to, and the class rates from La Crosse, Wis., to New York, N. Y., found unreasonable to extent they exceed the class rates in effect from New York to La Crosse. Class rates from La Crosse to other points in trunk-line territory and New England, found unreasonable to extent that they do not bear the same relation to the rates herein found reasonable for application from La Crosse to New York as heretofore borne. *La Crosse Shippers' Asso. v. A. A. R. R. Co.*, 371.

Rates on fertilizer, in bags, from Cleveland to Minford, Ohio, during federal control, found unreasonable as compared with lower rate maintained in the opposite direction, which lower rate was subsequently established via route of movement. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 615.

**BRANCH LINE POINTS.**

Maintenance of blanket rates from and to Nampa, Emmett, and Boise, Idaho, lower than on like traffic from and to points on the Murphy and Wilder branches of the Oregon Short Line, found to result in undue prejudice against the points on such branches and in undue preference of Nampa, Emmett, and Boise, to the extent of the difference in such rates. *State of Idaho, ex rel v. Director General*, 330.

When points distributed over an extensive area are grouped and a blanket rate applied to or from all such points, the fact that points lying within that blanket are on a branch line does not argue as strongly that there should be a branch-line differential as when rates are applied upon a graded basis. Whether or not there should be such a differential in connection with blanket rates depends in a large measure upon how extensive the blanket is. *Id.* (336-337).

In an extensive blanket a branch-line haul of 30 miles loses its significance unless it is made to appear that the branch-line operation is much more expensive than main-line operations from remoter parts of the blanket. *Id.* (337).

**BRANCH LINE POINTS—Continued.**

Maintenance of rates on commodities, the rates on which are stated on a graded or mileage basis from and to points on the Wilder and Murphy branches of the Oregon Short Line, higher than from and to points on the Emmett and Boise branches, found to result in undue prejudice to extent that the branch-line differentials on the former exceed those maintained on like traffic from and to points on the latter branches for like distances from the main-line junction. *Id.* (337).

Rates on petroleum and products, and fuel oil, from complainant's refinery located near East Braintree, Mass., on the Fore River R. R. Corporation, a common carrier short line, to destinations in New England, found unreasonable and unduly prejudicial in favor of competitors located within the Providence, R. I., switching district and at other shipping points, to extent they exceeded the standard distance basis of rates applicable from such competing points to the same New England destinations. Reasonable joint rates prescribed and reparation awarded. *Massachusetts Oil Refining Co. v. B. & A. R. R. Co.*, 535.

**BRIDGE COMPANY.**

Keokuk & Hamilton Bridge Co., found not to be a common carrier subject to the act. It neither holds itself out as ready to engage in transportation for hire as a public employment, nor has it the motive power or cars to perform such transportation. *Keokuk & Hamilton Bridge Co. v. W. Ry. Co.*, 545 (548).

**BRIDGES.**

Proposal to add 100 constructive miles for crossing the Hudson River by bridge at Poughkeepsie, N. Y., found not justified. Whether resulting rates would be reasonable or unreasonable or what revenue would accrue are matters of speculation, competitive and other conditions would have to be considered in connection with each rate, and the extent to which such constructive mileage would be used is impossible of determination at the present time. The Commission is not warranted in giving approval to a proposal so vague, indefinite, and uncertain in its effect. *Constructive Mileage over Poughkeepsie Bridge*, 230.

Cost of construction as shown by books of the company and cost of reproduction new as shown by preliminary reports of the Commission's bureau of valuation of the bridge over the Hudson River at Poughkeepsie, N. Y. *Id.* (232).

Preliminary reports of the Commission's bureau of valuation submitted in evidence to show the cost of reproduction new of a bridge over the Hudson River at Poughkeepsie, N. Y., considered by the Commission in passing upon the reasonableness of constructive mileage over such bridge. *Id.* (232).

If the cost of constructing and maintaining a bridge is 100 times greater than that for a mile of track, it does not follow that 100 constructive miles should be allowed for movement over the bridge in computing distance upon which to base rates for transportation. *Id.* (233).

Complaint asking the Commission to prescribe reasonable compensation for the use by defendant carriers of complainant's bridge across the Mississippi River between Keokuk, Iowa, and Hamilton, Ill., and to require the movement of defendants' traffic via that bridge, *Held*: Relationship between carriers and the bridge company is a matter of contract over which the Commission has no jurisdiction. *Keokuk & Hamilton Bridge Co. v. W. Ry. Co.*, 545.

**BRIDGES—Continued.**

That a carrier deducts an amount greater than is paid by it for the use of a bridge before dividing a joint rate with its connections does not of itself confer jurisdiction upon the Commission to prescribe the amount to be paid for that use. That portion of the act which confers upon the Commission jurisdiction to establish just divisions of joint rates refers only to divisions "between the carriers subject to this act." *Id.* (548).

**BRIDGE TOLLS.** *See* CONSTRUCTIVE MILEAGE.

**BULKY ARTICLES.** *See* LONG ARTICLES.

**BUNCHING.**

Period of 15 days, or as subsequently increased to 30 days, within which claims may be presented for the cancellation or refunding of demurrage charges assessed or collected on account of bunching of cars for unloading or reconsigning, found not unreasonable as compared with period of six months for filing of loss and damage claims. Preparation of claims for loss and damage involves the collection of considerably more data than under the bunching rule and the present provision is national in scope and apparently satisfactory to practically all shippers. *Carnation Milk Products Co. v. Director General, as Agent*, 553.

**CANADA.** *See also* ADJACENT FOREIGN COUNTRY.

Fifth-class rate on blister copper from Port Colborne, Ontario, Canada, to Constable Hook and Chrome, N. J., found unreasonable to extent it exceeded 78 per cent of the commodity rate on copper from Chicago to New York rate points, subsequently established. Reparation awarded. *International Nickel Co. v. Director General, as Agent*, 627.

American lines parties to a joint rate from or to a point in Canada, the charges under which are unreasonable, "cause to be done" or "do" a thing (i. e., the collection of unreasonable charges for the transportation of property) "prohibited and declared to be unlawful" by the act, and are "liable to the person or persons injured thereby for the full amount of the damage sustained." *Id.* (628).

In attempting to justify the reasonableness of a joint rate from points in Canada to points in the United States, the American carriers contended that the division received by them for the haul within the United States was not unreasonable or excessive. *Held*: Commission must consider the reasonableness of the joint rate as a whole. *Id.* (631).

**CAR FURNISHING.**

If a shipper habitually delays cars for unloading at destination the carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment; if the shipper habitually delays loading cars the carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393 (405).

The liability of carriers for general damages growing out of their failure to furnish cars is determinable by the courts. The law does not require them to define their liability by tariff publication and the Commission has no jurisdiction to require carriers to establish reciprocal demurrage regulations. *Deposit for Live-Poultry Car Ordered*, 653 (656).

**CAR-MILE EARNINGS.** *See* **EARNINGS.****"CARRIER."**

In the definition of the word "carrier" in paragraph (a) of section 204 of the transportation act, 1920, Congress meant those carriers which sustained losses in income under private operation in the federal control period as compared with the test period. Construction of the word "Deficit," 765 (771).

The idea that Congress, in the definition of "carrier," intended those carriers only which sustained actual deficits under private operation in the federal-control period, is not only in direct conflict with the plan of reimbursement detailed in the remaining paragraphs of the section but it is negatived by the fact that such a classification of carriers would be purely arbitrary and wholly unsupported by any sound reason. *Id.* (771).

**CARRIER COMPETITION.** *See* **COMPETITION.****CAR SHORTAGE.**

A shipper has no inherent right to detain a car beyond the free time and thus prevent it from being used for transportation by other shippers. Car shortages have resulted in incalculable loss in the past both to the carriers and the shipping public as a whole, and when it appears that shippers detain cars for purposes other than those necessary for proper transportation the carriers are justified in taking steps to prevent such abuses. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393 (407).

**CAR SPOTTING.** *See* **SPOTTING CARS.****CAR SUPPLY.**

Penalty charge of \$10 per car per day on lumber held for reconsignment beyond 48 hours after 7 a. m. of day following notice of arrival found not unreasonable or otherwise unlawful in the past. However, under present conditions, with a great number of idle freight cars and an entire absence of congestion throughout the country, the charge is, and while present conditions continue will be, unreasonable. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393

**CHARACTERISTICS OF COMMODITY.**

Wool originating in the far west contains more dirt and grease and consequently is heavier than the wool produced in official territory. Clearly the rates on such far western wool from Chicago, Ill., should be lower than the rates applicable throughout official territory which the Commission has found appropriate for application on the lighter eastern wool; and they should bear a fair relation to the proportional commodity rates on western wool from the Mississippi River crossings. *Swift & Co. v. Director General, as Agent*, 409 (413).

Rates on wool in the grease found not unreasonable as compared with rates on cotton-piece goods. Latter-named commodity has somewhat similar transportation characteristics, but being manufactured products are not subject to the loss from waste which attends wool in the grease. *Botany Worsted Mills v. Director General, as Agent*, 556 (558).

**CHICAGO-NEW YORK RATES.**

Fifth-class rate on blister copper from Port Colborne, Ontario, Canada, to Constable Hook and Chrome, N. J., found unreasonable to extent it exceeded 78 per cent of the commodity rate on copper from Chicago to New York rate points, subsequently established. Reparation awarded. *International Nickel Co. v. Director General, as Agent*, 627.

CLASS AND COMMODITY RATES. *See also* CLASS RATES; COMMODITY RATES.

Proposal to cancel the l. c. l. commodity rates on iron and steel articles from Boston, Mass., and other points to destinations on the Maine Central, thereby making applicable higher class rates, found not justified. Proposed rates would result in violations of the fourth section of the act and would widen the disparity in rates already existing between Boston and competing points. Iron and Steel Articles from Boston, 100.

Class rates on rabbits, not dressed, from points in Kansas and Nebraska, to Chicago, Ill., Detroit, Mich., Philadelphia, Pa., and New York, N. Y., found unreasonable to extent that charges on shipments to Chicago exceeded lower commodity rates, subsequently established, and through combination rates on shipments to points beyond Chicago found unreasonable to extent that components east thereof exceeded the third-class rates contemporaneously in effect. Reparation awarded. Jerpe Commission Co. v. Director General, as Agent, 131.

Sixth-class rate on steel rails from St. Louis, Mo., to Springfield, Ill., exceeded lower commodity rate contemporaneously in effect from St. Louis to points north of Springfield, from St. Louis to Chicago, Ill., and from St. Louis to Springfield via routes other than route of movement. Reasonable maximum rate prescribed and reparation awarded. Mid-continent Equipment & Machinery Co. v. C. & A. R. R. Co., 151.

Between Meridian, Miss., Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., on the one hand, and certain points in Alabama within 200 miles of Meridian, on the other, proposed in compliance with the Commission's order in *Meridian Traffic Bureau*, 60 I. C. C., 5, for removal of undue prejudice found to exist against Meridian, found justified in some instances and not in others. Reasonable maximum distance scales prescribed. Meridian Rate Case, 179.

Class rate on a sporadic shipment of roasted zinc ore from Canton, Ohio, to Terre Haute, Ind., found not unreasonable as compared with lower commodity rate subsequently established. Such lower rate is much lower than commodity rates on zinc ore found not unreasonable in *Illinois Zinc Co.*, 61 I. C. C., 92. Grasselli Chemical Co. v. Director General, as Agent, 263.

Commodity rates on tapioca, tapioca flour, and cassava flour, in packages, were the same. Commodity rate on tapioca cancelled leaving in effect higher class rate. Subsequently commodity rate reestablished on tapioca which restored the parity formerly existing. Rates charged on shipments moving during interim found unreasonable and reparation awarded. Minute Tapioca Co. v. Director General, as Agent, 267.

Class rates on gasoline and refined oils from North Baton Rouge, La., to Guin and Carbon Hill, Ala., found unreasonable to extent they exceeded lower commodity rate in effect between the same points but which were restricted in error to apply via more circuitous routes, which restriction was subsequently removed. Reparation awarded. Standard Oil Co. (Ky.) v. Director General, as Agent, 274.

Class rates on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Greensboro, N. C., and Columbia, S. C., during federal control, exceeded lower commodity rates subsequently established, request therefor having been made before shipments moved. Reparation awarded. American Agricultural Chemical Co. v. Director General, as Agent, 277.

66 I. C. C.

## CLASS AND COMMODITY RATES—Continued.

Class rates on mixed or nitrating acid, in tank-car loads, from Hopatcong and Haskell, N. J., to Arlington, N. J., during federal control, found unreasonable to extent they exceeded lower commodity rates to North Newark, N. J., which lower rates could have been applied from Hopatcong and Haskell under Rule 77 of Tariff Circular 18-A. Reparation awarded. *DuPont de Nemours & Co. v. Director General, as Agent*, 291.

Class rates on lumber from Preston and Logansport, La., to Eastland and Ranger, Tex., exceeded lower blanket commodity rate contemporaneously in effect between points in this territory for joint line hauls of the same or greater distances, which lower rate was subsequently established between the points here involved. Reparation awarded. *Weaver Bros. Lumber Co. v. Director General, as Agent*, 297.

Class rates on self-rising compound flour from Cortland, N. Y., to points in official territory found not unreasonable as compared with commodity rates on grain products, and applicable to self-rising flour, maintained by defendants in trunk line territory, and from central to trunk line and New England territories. *Champlin v. Director General, as Agent*, 309.

Class rate on imported nitrate of soda from Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, during federal control, exceeded lower commodity rate subsequently established after request therefor made. *Barrett Co. v. Director General, as Agent*, 381.

Fifth class rate on imported pickled sheep skins from Pacific coast ports to Atlantic seaboard destinations, exceeded lower commodity rate on domestic shipments of sheep slats (green), which lower commodity rate was subsequently established on imported pickled sheep skins. Reparation awarded. *Tanners' Council v. Director General, as Agent*, 415.

To and from Woodbury, N. J., found not unreasonable, discriminatory, or unduly prejudicial as compared with rates to and from Philadelphia, Pa., and points taking the same rates. *Belber Trunk & Bag Co. v. W. J. & S. R. R. Co.*, 490.

From points in Indiana to St. Paul and Minneapolis, Minn., found unreasonable and unduly prejudicial to extent they exceed the rates in effect from Illinois points and west-bank Mississippi River points in Iowa and Missouri for approximately equal distances. *Public Service Commission of Indiana v. A., T. & S. F. Ry. Co.*, 512.

Third-class rates on wool in the grease were in effect from Boston and East Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J., while lower commodity rates were contemporaneously maintained to specified points in the Philadelphia, Pa., rate group. Subsequently such commodity rates to Philadelphia points were eliminated and both destination groups were placed on a parity. *Held*: Higher class rates charged on shipments moving during interim found not unreasonable or unduly prejudicial. *Botany Worsted Mills v. Director General, as Agent*, 556.

Fifth-class rate on blister copper from Port Colborne, Ontario, Canada, to Constable Hook and Chrome, N. J., exceeded 78 per cent of the commodity rate on copper from Chicago to New York rate points, subsequently established. Reparation awarded. *International Nickel Co. v. Director General, as Agent*, 627.

## CLASS AND COMMODITY RATES—Continued.

Class rates on rough steel shafting from Camden, N. J., Buffalo, N. Y., Titusville and Nicetown, Pa., and Gary, Ind., to Portland, Oreg., and Tacoma, Wash., found unreasonable as compared with lower commodity rates on finished iron and steel articles of greater bulk and more susceptible of damage. Reparation awarded to basis of commodity rate subsequently established. *Northwest Steel Co. v. C., B. & Q. R. R. Co.*, 633.

Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Ft. Wayne Corrugated Paper Co. v. Director General, as Agent*, 669 (670).

Third-class rates on "jacks, or jack screws, n. o. l. b. n., not mounted on trucks, l. c. l." charged on shipments of automobile jacks, in less than carloads, found legally applicable and not unreasonable or unjustly discriminatory as compared with lower commodity rates on wagon jacks. Commodity description "jacks, wagon" was neither misleading nor indefinite, as the term "wagon" is commonly accepted as applying to a vehicle which is not self-propelled. *Chevrolet Motor Co. v. Director General, as Agent*, 677.

## CLASSIFICATION.

In General: Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Ft. Wayne Corrugated Paper Co. v. Director General, as Agent*, 669 (670).

Hipolite: Present classification rating of third class on, found not unreasonable. Former any quantity ratings of first class in official and second class in western and southern classifications found unreasonable, as applied to c. l. shipments, to the extent they exceeded third class, subsequently established. Reparation awarded. *Hipolite Co. v. A., C. & Y. Ry. Co.*, 666.

Jacks, automobile: Third-class rates on "jacks, or jack screws, n. o. l. b. n., not mounted on trucks, l. c. l." charged on shipments of automobile jacks, in less than carloads, found legally applicable and not unreasonable or unjustly discriminatory as compared with lower commodity rates on wagon jacks. Commodity description "jacks, wagon" was neither misleading nor indefinite, as the term "wagon" is commonly accepted as applying to a vehicle which is not self-propelled. *Chevrolet Motor Co. v. Director General, as Agent*, 677.

Rollers and cores, old, printer's: Official and western classification ratings of third class on, found not unreasonable as compared with ratings of fourth class in Illinois and Iowa classifications, or as compared with fourth-class ratings on other commodities which from a classification standpoint are not analogous to printer's rollers or cores. *Chicago Roller Co. v. Director General, as Agent*, 657.

## CLASSIFICATION TERRITORIES.

Class rates on self-rising compound flour from Cortland, N. Y., to points in official territory found not unreasonable as compared with commodity rates on grain products, and applicable to self-rising flour, maintained by defendants in trunk line territory, and from central to trunk line and New England territories. *Champlin v. Director General, as Agent*, 309.

## CLASSIFICATION TERRITORIES—Continued.

Official and western classification ratings of third class on old printer's rollers and printer's roller cores found not unreasonable as compared with ratings of fourth class in Illinois and Iowa classifications. *Chicago Roller Co. v. Director General, as Agent, 657.*

CLASS RATES. *See also* CLASS AND COMMODITY RATES.

From Corinth, Miss., to points in Tennessee between Corinth and Jackson, Tenn., found unreasonable and unduly prejudicial to Corinth and its shippers, as compared with class rates to the same points from Jackson. Reasonable maximum distance rates prescribed. *Corinth Grocery Co. v. M. & O. R. R. Co., 320.*

Proposed cancellation of joint class rates between New York, New Haven & Hartford stations and Bay Ridge, Bath Junction, Parkville, Vanderveer Park, and East New York, N. Y., leaving in effect higher combination rates, found not justified. *Rate Cancellations, New Haven Stations and Long Island, 347.*

Upon further hearing, finding in *The Wisconsin Rate Cases, 44 I. C. C., 602*, adhered to, and the class rates from La Crosse, Wis., to New York, N. Y., found unreasonable to extent they exceed the class rates in effect from New York to La Crosse. Class rates from La Crosse to other points in trunk line territory and New England, found unreasonable to extent that they do not bear the same relation to the rates herein found reasonable for application from La Crosse to New York as heretofore borne. *La Crosse Shippers' Asso. v. A. A. R. R. Co., 371.*

Proportional class rates between west-bank Mississippi River crossings and Mason City, Iowa, on traffic originating at or destined to official territory east of the Indiana-Illinois state line, published by carriers pursuant to the Commission's orders in *Interior Iowa Cases, 46 I. C. C., 39*, found not unreasonable or unduly prejudicial. *Alter v. Director General, as Agent, 619.*

Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Ft. Wayne Corrugated Paper Co. v. Director General, as Agent, 669 (670).*

COMBINATION RATES. *See also* LOCAL RATES.

Class rates on rabbits, not dressed, from points in Kansas and Nebraska to Chicago, Ill., Detroit, Mich., Philadelphia, Pa., and New York, N. Y., found unreasonable to extent that charges on shipments to Chicago exceeded lower commodity rates, subsequently established, and through combination rates on shipments to points beyond Chicago found unreasonable to extent that components east thereof exceeded the third-class rates contemporaneously in effect. Reparation awarded. *Jerpe Commission Co. v. Director General, as Agent, 131.*

To and from Rivesville Junction, W. Va., on bituminous coal from Hood mine, South Rivesville, W. Va., to destinations in New York and New Jersey, found not unreasonable due to the factor from the mine to the junction point. No other shipments have moved over these routes, no request has ever been made for a specific rate from the mine to the junction, and no future movement is contemplated. *Fairmont & Cleveland Coal Co. v. Director General, as Agent, 293.*



## COMBINATION RATES—Continued.

On fuller's earth from Midway, Quincy, and Ellenton, Fla., to Oklahoma City, Okla., found unreasonable and unduly prejudicial to extent that the components thereof from Memphis, Tenn., to Oklahoma City exceeded the components from Memphis to Cushing, Okmulgee, Tulsa, and Muskogee, Okla., and Independence and Arkansas City, Kans. Reparation awarded. *Choate Oil Corp. v. Director General*, as Agent, 562.

Aggregate charges on dried fruits from Fresno and other California points to Tacoma, Wash., composed of applicable joint rates of line haul carriers plus switching charge to complainant's warehouses, located on an industry track, found not unreasonable or discriminatory. Aggregate charges were less than the combinations to and from Portland, Oreg., and compare favorably with rates on the same commodity between other points in the same general territory for less distances. *West Coast Grocery Co. v. Director General*, as Agent, 679.

Fertilizer rate legally applicable and assessed on oyster shells from Apalachicola, Fla., to Mobile, Ala., composed of a combination to Montgomery, Ala., and thence back to Mobile, authorized under rule 5 (b) of Tariff Circular 18-A, found unreasonable as compared with rates on crushed oyster shells from various southern points to numerous destinations for greater distances, and to extent it exceeded joint rate subsequently established. Reparation denied. *Gulf City Mfg. Co. v. Director General*, as Agent, 763.

## COMMANDEERED VESSELS.

Tack plate shipped from Vandergrift, Pa., to Baltimore, Md., for export, but due to vessel for which originally intended being commandeered by one of the nations then at war, was reconsigned to New York, N. Y., or Philadelphia, Pa., and exported from those ports. *Held*: Domestic demurrage charges accruing at Baltimore found not unreasonable following *Lowry Lumber Co.*, 58 I. C. C., 113, and *Heid Brothers*, 55 I. C. C., 416. *British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co.*, 661.

## COMMERCIAL AND ECONOMIC CONDITIONS.

Increases applied under *Increased Rates, 1920*, 58 I. C. C., 220, on lumber and forest products from various states south of the Ohio River to c. f. a. and other defined territories, disturbed the relationship formerly existing between northern and southern producing points to common markets, and attributed to a general depression in the lumber industry. Rates as so increased found unreasonable for the future and reasonable basis bearing a closer relationship to that which existed prior to the increases prescribed. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68.

There is merit in the contention that because of the relatively long haul of hardwood lumber from southern points to consuming points in central and eastern trunk-line territories, the percentage increase authorized under *Increased Rates, 1920*, 58 I. C. C., 220, has had a peculiarly disturbing effect upon the lumber business. *Id.* (74).

## COMMODITY RATES. See also CLASS AND COMMODITY RATES.

Exception to the classification publishing rates as percentages of certain class rates, does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Ft. Wayne Corrugated Paper Co. v. Director General*, as Agent, 669 (670).

## COMMON CARRIERS.

Beaver Valley R. R. found to be a common carrier subject to the act.

Beaver Sand Co. *v.* Director General, as Agent, 285 (287).

The size of a road does not determine whether or not it is a common carrier. *Id.* 287).

Ore Carrying Corporation, a water line operating under a common arrangement with a rail carrier for the continuous carriage of through interstate traffic, found to be a common carrier subject to the act, which may lawfully receive from its trunk-line connections reasonable divisions of joint interstate rates, under appropriate tariffs. *Ore Carrying Corporation v. C. R. R. Co. of N. J.*, 311.

Fore River R. R. Corporation found to be a common carrier subject to the act. *Massachusetts Oil Refining Co. v. B. & A. R. R. Co.*, 535 (543).

Keokuk & Hamilton Bridge Co., found not to be a common carrier subject to the act. It neither holds itself out as ready to engage in transportation for hire as a public employment, nor has it the motive power or cars to perform such transportation. *Keokuk & Hamilton Bridge Co. v. W. Ry. Co.*, 545 (548).

## COMPANY MATERIAL.

It is inevitable that when freight rates are increased the carrier that brings its fuel and other supplies from a distance will suffer disproportionately. *New England Divisions*, 196 (200).

## COMPARATIVE RATES.

Boulders, agate: Rates on l. c. l. shipments of, in barrels and boxes, found not unreasonable as compared with rates on jasper and onyx, loose or in packages, or with rates on silica. *Agate Products Co. v. Director General, as Agent*, 674 (675-676).

Coke: Rates on anthracite coal not shown to have been an appropriate measure of the rates on coke. The loading is materially less on coke than on anthracite coal and the car-earnings are less, even when the rate per ton is materially higher. *Minnesota By-Product Coke Co. v. Director General, as Agent*, 480 (488-489).

Copper, blister: Rate on, found unreasonable as compared with rates on ferrosilicon, cyanamid, and black copper. *International Nickel Co. v. Director General, as Agent*, 627 (630-631).

Flour, self-rising compound: Rate on, found not unreasonable as compared with lower rate on grain products, which lower rate was subsequently made applicable to self-rising compound flour. *Champlin v. Director General, as Agent*, 309.

Hipolite: Ratings on, in official, western, and southern classification territories compared with rates on various other commodities. *Hipolite Co. v. A., C. & Y. Ry. Co.*, 666 (667-668).

Iron, pig: Rate on, found not unreasonable or unduly prejudicial because the spread in the rates on that article and manufactured iron and steel articles exceeded 5 cents, the basis subsequently established. *Shibakawa & Co. (Inc.) v. P. & R. Ry. Co.*, 261.

Kapok: Rate on, found unreasonable to extent it exceeded rate on feathers and certain kinds of fiber with which kapok is fairly comparable. Reparation awarded. *Dutton Co. v. Director General, as Agent*, 663.

Nitrate of soda: Rate on, found not unreasonable as compared with rate on salt. Difference in value considerable and salt is desirable traffic, while nitrate of soda, a dangerous article from a transportation standpoint, is undesirable. *Du Pont de Nemours & Co. v. Director General, as Agent*, 501 (502).

## COMPARATIVE RATES—Continued.

**Pelts:** Rates on green salted sheep pelts, in straight carloads, and on green salted hides and green salted sheep pelts, in mixed carloads, found unreasonable to extent they exceeded rates on green salted hides in straight carloads. Reasonable maximum rates prescribed and reparation awarded. *Swift & Co. v. C., B. & Q. R. R. Co.*, 33.

**Shafting, rough steel:** Class rates on, found unreasonable as compared with lower commodity rates on finished iron and steel articles of greater bulk and more susceptible of damage. Reparation awarded to basis of commodity rate subsequently established. *Northwest Steel Co. v. C., B. & Q. R. R. Co.*, 633.

**Shells, oyster:** Rate on, from Apalachicola, Fla., to Mobile, Ala., found unreasonable as compared with rate on crushed oyster shells from various southern points to numerous destinations. *Gulf City Mfg. Co. v. Director General*, as Agent, 763.

**Skins, sheep, pickled:** Rate on, imported, found unreasonable to extent it exceeded rate on domestic shipments of sheep slats (green). Reparation awarded. *Tanners' Council v. Director General*, as Agent, 415.

**Tapioca:** Rates on, in packages, found unreasonable to extent they exceeded rates on cassava flour and macaroni and noodles. Reparation awarded. *Minute Tapioca Co. v. Director General*, as Agent, 267.

**Woodwork, autobody:** Rates on, k. d., found unreasonable as compared with lower rates on wagon material in the rough or wholly or partly finished, which lower rate was subsequently made applicable to autobody woodwork. Reparation awarded. *Chevrolet Motor Co. of Texas v. Director General*, as Agent, 617.

**Wool in the grease:** Rates on, found not unreasonable as compared with rates on cotton piece goods. Latter named commodity has somewhat similar transportation characteristics, but being manufactured products are not subject to the loss from waste which attends wool in the grease. *Botany Worsted Mills v. Director General*, as Agent, 556 (558).

## COMPETITION.

**Carrier:** Prayer for establishment of through routes and joint rates via a short line denied where point served has better transportation service than most towns of its size in that it is reached by two trunk lines; the service which these lines are prepared to and do render is entirely adequate to the needs of the community as a whole; there was never any necessity for the construction of the short line; and if defendants were to participate in joint rates or absorb the charges of the short line, they would be building up a competitor at their own expense, depleting their revenues and creating a dangerous precedent. *Beaver Sand Co. v. Director General*, as Agent, 285.

**Market:** Proposal to cancel the l. c. l. commodity rates on iron and steel articles from Boston, Mass., and other points to destinations on the Maine Central, thereby making applicable higher class rates, found not justified. Proposed rates would widen the disparity in rates already existing between Boston and competing points. *Iron and Steel Articles from Boston*, 100.

COMPONENT. *See* FACTOR.  
CONCURRENCE.

Upon supplemental report, *Held*: In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, findings in 61 I. C. C., 132 and 145, wherein carriers' participation in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on their own rails was found to result in undue prejudice, reversed. *American Creosoting Co. v. Director General*, 54; *Southern Hardwood Traffic Asso. v. Director General*, 67.

In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, order of Commission suspending schedules under which carriers propose to withdraw existing transit arrangements on lumber moving via Memphis, Tenn., or Louisville, Ky., from points on the Rock Island in Arkansas and Louisiana, to various northern points, vacated. *Transit Privileges on Lumber*, 94.

Schedules under which connecting carrier proposed to restrict the application of through rates, filed against the express wishes of the originating carrier and which would deprive it of its long haul, found not justified. *Routing on Coal from Western Maryland Ry. Mines*, 103.

Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point, and the publication by the inbound carrier of a tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justified in relying upon the lower basis of rates thus offered. *Reparation awarded. Brenner Lumber Co. v. Director General, as Agent*, 595.

CONFERENCE RULINGS.

Conference ruling 381 quoted. *Keokuk & Hamilton Bridge Co. v. W. Ry. Co.*, 545 (548).

Conference ruling 474 (c) cited. *Mulkey Salt Co. v. Director General, as Agent*, 441.

CONFLICTING RATES.

Rule for disposition of fractions under general order No. 28 of the Director General, applied only to rates quoted in dollars or dollars and cents per ton. Such rule, did not, and could not, by any reasonable interpretation qualify another rule, which was complete in itself and specifically provided for the application of rates stated in cents per ton or other unit. Shipments found overcharged and reparation awarded. *Hercules Mining Co. v. Director General, as Agent*, 140.

Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point, and the publication by the inbound carrier of a tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justified in relying upon the lower basis of rates thus offered. *Reparation awarded. Brenner Lumber Co. v. Director General, as Agent*, 595.

CONGESTION.

Penalty charge of \$10 per car per day on lumber held for reconsignment beyond 48 hours after 7 a. m. of day following notice of arrival found not unreasonable or otherwise unlawful in the past. However, under present conditions with a great number of idle freight cars, and an entire absence of congestion throughout the country, the charge is, and while present conditions continue will be, unreasonable. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393.

**CONGESTION—Continued.**

Embargoes brought about by severe congestion of traffic were in effect when shipments originated, but since tariffs contained no restriction against reconsignment to embargoed points, demurrage charges assessed for car detention resulting therefrom, found illegal. Reparation awarded. *Krauss Bros. Lumber Co. v. Director General, as Agent*, 637.

**CONNECTING LINES.**

The mere fact that one common-carrier railroad has a physical connection with another is not of itself sufficient ground upon which to base an order requiring the establishment of joint rates over those roads. The question of whether or not they should be established is one calling for the exercise of the Commission's judgment upon the circumstances and conditions of each particular case, as the act provides that the Commission may and shall establish joint rates "whenever deemed by it to be necessary or desirable in the public interest." *Beaver Sand Co. v. Director General, as Agent*, 285 (288-289).

**CONSTRUCTION OF STATUTE. See also PURPOSE OF ACT.**

Section 15, paragraph (5) is definitely limited, both as to initial loading and as to final unloading, to public stockyards. It does not apply to initial loading at other than public stockyards even for shipment to such yards. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44 (49).

The word "deficit" as used in paragraph (a) of section 204 of the transportation act, 1920, construed to mean a deficiency or decrease in a carrier's railway operating income for that portion (as a whole) of the period of federal control during which it operated its own railroad as compared with its average railway operating income for the corresponding portions of the test period. Construction of the Word "Deficit," 765.

The basic principle which underlies all rules of statutory construction is that the purpose, the intent of the lawmaker constitutes the law. And it is now thoroughly established that, where the language of a statute is of doubtful meaning, the true interpretation is to be ascertained by an inquiry into the purpose, the spirit of the law as disclosed by its entire context, by the history of its enactment, by statutes in pari materia, and by the general system of legislation of which the statute in question is a part. *Id.* (767).

Not only in the title but also in the definition of "carrier" in paragraph (a) of section 204 of the transportation act, 1920, the word "deficit" is used in its general and broader meaning; that is, a deficiency, a falling short, a decrease. *Id.* (771).

If the word "deficit" in the definition of carrier in paragraph (a) of section 204 of the transportation act, 1920, is construed as a deficiency or decrease in income under private operation in the federal control period as compared with the income during the test period, the definition of "carrier" is completely harmonized with both the letter and spirit of the remaining paragraphs of that section. *Id.* (771).

If the word "deficit" in the definition of carrier in paragraph (a) of section 204 of the transportation act, 1920, is given its technical meaning as used by accountants, the effect is to make the right to reimbursement contingent upon the carrier's having sustained a technical or absolute deficit while privately operated in the federal control period, a result which is in direct conflict with the plan of reimbursement set forth in detail in the section. *Id.* (771).

## CONSTRUCTION OF STATUTE—Continued.

The rule is thoroughly established that if a word or phrase is susceptible of two constructions, one of which will effectuate the evident purpose of the statute and one of which is inconsistent or in conflict with that purpose, the former must control. *Id.* (771).

In the definition of the word "carrier" in paragraph (a) of section 204 of the transportation act, 1920, Congress meant those carriers which sustained losses in income under private operation in the federal control period as compared with the test period. *Id.* (771).

The idea that Congress, in the definition of "carrier," intended those carriers only which sustained actual deficits under private operation in the federal control period, is not only in direct conflict with the plan of reimbursement detailed in the remaining paragraphs of the section but it is negated by the fact that such a classification of carriers would be purely arbitrary and wholly unsupported by any sound reason. *Id.* (771).

## CONSTRUCTIVE MILEAGE.

Proposal to add 100 constructive miles for crossing the Hudson River by bridge at Poughkeepsie, N. Y., found not justified. Whether resulting rates would be reasonable or unreasonable or what revenue would accrue are matters of speculation, competitive and other conditions would have to be considered in connection with each rate, and the extent to which such constructive mileage would be used is impossible of determination at the present time. The Commission is not warranted in giving approval to a proposal so vague, indefinite, and uncertain in its effect. *Constructive Mileage over Poughkeepsie Bridge*, 230.

If the cost of constructing and maintaining a bridge is 100 times greater than that for a mile of track, it does not follow that 100 constructive miles should be allowed for movement over the bridge in computing distance, upon which to base rates for transportation. *Id.* (233).

## CONTAINERS.

Standard box charges assessed on citrus fruit, in field boxes, the dimensions of which were smaller than those of the standard box, and on returned empty field boxes, found not unreasonable. The mere fact that complainant was charged more for hauling a like quantity of fruit than were the users of standard containers does not entitle it to reparation. Such a result inevitably follows where rates are stated in amounts per package and the shipper chooses to use a package smaller than the standard prescribed by the tariff. *Florida Citrus Exchange v. Director General*, as Agent, 307.

Rates on l. c. l. shipments of agate boulders, in bags, found unreasonable to extent they exceeded rates on the same commodity when in barrels or boxes. Reparation awarded. *Agate Products Co. v. Director General*, as Agent, 674.

CONTRACTS. *See also* AGREEMENTS.

Complaint asking the Commission to prescribe reasonable compensation for the use by defendant carriers of complainant's bridge across the Mississippi River between Keokuk, Iowa, and Hamilton, Ill., and to require the movement of defendant's traffic via that bridge, *Held*: Relationship between carriers and the bridge company is a matter of contract over which the Commission has no jurisdiction. *Keokuk & Hamilton Bridge Co. v. W. Ry. Co.*, 545.

## CONTRACTS—Continued.

Upon the resumption of corporate control and operation, the Pennsylvania R. R. Co. awarded to the Baldwin Locomotive Works a contract for the repair of 200 locomotives, while maintaining shops on its own line for such work. Upon investigation, the cost to respondent was over \$3,000,000 in excess of the cost at which the work might have been done in its own shops, and included work paid for twice in some instances. Such work could have been done in respondent's own shops within a reasonable time by an appropriate coordination of efforts and reasonable added exertion. Construction and Repair of Ry. Equipment: Penn. R. R. Co., 694.

Contracts negotiated by the Atlantic Coast Line R. R. Co. in 1920 for the repair of 30 of its locomotives by the Baldwin Locomotive Works, although based upon excessive costs, not found, in the circumstances disclosed, to have been unwarranted. Construction and Repair of Ry. Equipment: A. C. L. R. R. Co., 727.

Under contracts negotiated in 1920 with certain locomotive construction companies, 195 locomotives of the New York Central R. R., were sent to contract shops for classified repairs. Upon investigation the cost was in the neighborhood of \$3,000,000 in excess of the cost of similar work in its own shops and such respondent could have repaired at least the greater number of the locomotives in its own shops within the time in which the contract work was done. Construction and Repair of Ry. Equipment: N. Y. C. R. R. Co., 732.

## CONVENIENCE AND NECESSITY.

Complaint praying for the issuance of an order under paragraph (21) of section 1 of the act requiring the C., B. & Q. R. R. Co. to extend its line from Ericson to Chambers, Nebr.; *Held*: Proposed extension is not reasonably required in the interest of public convenience and necessity, and the issuance of the order prayed for would require defendant to invest a large sum of money in an undertaking which at the outset would not be a financial success, and would not hold out hope for the future. *Cooke v. C., B. & Q. R. R. Co.*, 452.

An order requiring a carrier to extend its line in the interest of public convenience and necessity, and involving as a necessary incident expenses which would impair the ability of the carrier to perform its duty to the public, would be a contradiction. On the other hand, no order could be issued requiring an extension, unless reasonably required in the interest of public convenience and necessity. Both of the conditions must be satisfied. *Id.* (452-453).

## COST OF OPERATION.

In an extensive blanket a branch-line haul of 30 miles loses its significance unless it is made to appear that the branch-line operation is much more expensive than main-line operations from remoter parts of the blanket. *State of Idaho, ex rel v. Director General*, 330 (337).

## COST OF SERVICE.

The Commission's power over divisions is founded upon the public interest; carriers are mutually dependent parts of the transportation system; the public interest requires that all essential parts be maintained in effective working condition; the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. *New England Divisions*, 196 (199).

**COST OF SERVICE—Continued.**

Includes not only expenses of operation but taxes and the proper capital charges incident to the continued functioning of the property. The Commission recognizes this when it makes allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange of traffic may likewise be greater, relatively, where this density is low. *Id.* (199).

**CREOSOTING IN TRANSIT. See TRANSIT ARRANGEMENTS.****DAMAGES.**

Fact that some competitors may have enjoyed larger profits does not establish damage where it is not shown that the price of the commodity was controlled by any such competitors by virtue of a preferential rate. *Standard Oil Co. v. Director General, as Agent*, 37 (41-42).

In complying with Rule V of the Commission's Rules of Practice, complainants authorized to submit proof in the form of affidavits that freight charges were paid and borne by them. Carriers do not object to this form of proof. *Boston Chamber of Commerce v. Director General, as Agent*, 142 (144).

No reparation can be awarded for the exaction of an unreasonable rate where witness unable to give direct testimony as to who paid and bore the charges. *American Wood Pipe Co. v. Director General, as Agent*, 155 (156).

Where record does not show that complainants paid or bore the unreasonable transportation charges on any of the shipments, reparation denied. *Clarke-Burkle & Co. v. Director General, as Agent*, 265 (266).

The Commission is without jurisdiction to award reparation for excess war taxes paid. *Weaver Bros. Lumber Co. v. Director General, as Agent*, 297 (299).

Contention that since the price of the commodity was fixed by the government, complainants were not damaged by the exaction of unreasonable rates, because they would not have received any more profit if lower rates had been in effect, and that an award of reparation would permit profits in excess of those allowed by the government, not sustained. *Tanners' Council v. Director General, as Agent*, 415 (419).

After complaint was filed, powers of attorney were executed by certain consignors, not parties to the complaint, in favor of a complainant who was so named. *Held*: Introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint, and since such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied. *Id.* (419).

Where shipments were sold at a delivered price and complainant's customers paid the freight charges and deducted them from the invoice price in making settlement, complainants are entitled to any reparation that may be awarded. *Darnell-Taenzer Case*, 245 U. S., 531. *Iola Cement Mills Traffic Asso. v. Director General, as Agent*, 495 (500).

Complaint filed by a public traffic manager naming himself as complainant. *Held*: Since he is not the real party in interest reparation denied. *Carney v. Director General, as Agent*, 560 (561).



## DAMAGES—Continued.

Complainant, a commission company, sought reparation as agent for individual shippers named in the complaint. Whereabouts of some complainants unknown, one is deceased and his claim is not listed as an asset of his estate and his administrator declines to take cognizance of it, and the remainder have filed requests for dismissal. *Held*: Complainants' agency to make claim for reparation not sufficiently established. *Hyre-Price Live Stock Commission Co. v. M., K. & T. Ry. Co.*, 591.

Complainant's prices were not always governed by the prices of its competitor. It did not meet the prices of its competitor on some of the shipments on which reparation is asked, and such shipments can not be segregated from those on which it had to shrink its profits in order to make the sale. *Held*: Complainant has failed to prove with sufficient particularity that it was damaged by reason of any unjust discrimination or undue prejudice that may have existed. *Albers Bros. Milling Co. v. Director General, as Agent*, 593.

American lines parties to a joint rate from or to a point in Canada, the charges under which are unreasonable, "cause to be done" or "do" a thing (i. e., the collection of unreasonable charges for the transportation of property) "prohibited and declared to be unlawful" by the act, and are "liable to the person or persons injured thereby for the full amount of the damage sustained." *International Nickel Co. v. Director General, as Agent*, 627 (628).

Fact that one company may be a subsidiary of another does not *ipso facto* entitle the latter to bring an action in its own name for damages suffered by the former. *American Agricultural Chemical Co. v. Director General, as Agent*, 650 (651).

Reparation denied for the exaction of an unreasonable rate where complainant was not a party to the transportation records. In cases where complainants are parties it must appear that they suffered the damages claimed before the Commission is justified in entering an order of reparation in their favor. *Id.* (652).

Shipments which move from a point of origin to final destination with an arrangement for storage in transit are regarded as moving under a single continuous contract of carriage. Neither the switching line nor the outbound carriers at the transit point are necessary parties defendant and an award of reparation may be made against the inbound carrier who collected the illegal charges for the switching line. *Capital Warehouse Co. v. Director General, as Agent*, 683 (683-686).

## DANGEROUS ARTICLES.

Maintenance of track-storage charges on gasoline and other articles requiring "flammable" placards under regulations prescribed by the Commission, when held in tank cars on private tracks, where ownership of the tracks and cars is the same, found not unreasonable or unlawful where the private tracks are described as "Railroad Premises" in a rule of carriers' tariffs. Charge has been in no way burdensome to shippers, and its purpose is to promote safety. *Western Petroleum Refiners Assn. v. A. & R. R. Co.*, 58.

## DEFICIT.

The word "deficit" as used in paragraph (a) of section 204 of the transportation act, 1920, construed to mean a deficiency or decrease in a carrier's railway operating income for that portion (as a whole) of the period of federal control during which it operated its own railroad as compared with its average railway operating income for the corresponding portions of the test period. Construction of the Word "Deficit," 765.

The fact that a carrier has sustained a deficit while privately operated during the federal-control period is not determinative either of the carrier's right to reimbursement or of the amount to which it may be entitled. Id. (770).

Defined. Id. (770).

Not only in the title, but also in the definition of "carrier" in paragraph (a) of section 204 of the transportation act, 1920, the word "deficit" is used in its general and broader meaning; that is, a deficiency, a falling short, a decrease. Id. (771).

If the word "deficit" in the definition of carrier in paragraph (a) of section 204 of the transportation act, 1920, is construed as a deficiency or decrease in income under private operation in the federal-control period, as compared with the income during the test period, the definition of "carrier" is completely harmonized with both the letter and spirit of the remaining paragraphs of that section. Id. (771).

If the word "deficit" in the definition of carrier in paragraph (a) of section 204 of the transportation act, 1920, is given its technical meaning as used by accountants, the effect is to make the right to reimbursement contingent upon the carrier's having sustained a technical or absolute deficit while privately operated in the federal-control period, a result which is in direct conflict with the plan of reimbursement set forth in detail in the section. Id. (771).

In the definition of the word "carrier" in paragraph (a) of section 204 of the transportation act, 1920, Congress meant those carriers which sustained losses in income under private operation in the federal-control period as compared with the test period. Id. (771).

The idea that Congress, in the definition of "carrier," intended those carriers only which sustained actual deficits under private operation in the federal-control period is not only in direct conflict with the plan of reimbursement detailed in the remaining paragraphs of the section but it is negatived by the fact that such a classification of carriers would be purely arbitrary and wholly unsupported by any sound reason. Id. (771).

## DELEGATION OF AUTHORITY.

Contention that the language of the federal-control act did not give power to the President or the Director General to assess a penalty; and that Congress could not have given either of them that power, because the imposition of a penalty is a legislative function which can not be delegated, *Held*: The Director General was authorized to inaugurate any reasonable and just regulation and practice which he might find necessary to eliminate the abuse of excessive and unreasonable detention of freight cars. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393 (396).

**DELIVERY.** *See also* SPOTTING CARS.

Request received too late to accomplish diversion and shipment arrived at originally billed destination, where it was placed upon public delivery tracks. Refused by order notify consignee and subsequently reconsigned. *Held*: Fact that this was an order notify shipment did not preclude carrier from placing car for unloading prior to surrender of bill of lading in absence of instructions to the contrary, and as tariff provided that if a car was placed at original destination and reforwarded without being unloaded it would be subject to rates to and from reconsignment point, combination charged found not unreasonable or unlawful. *Sullivan Lumber Co. v. Director General, as Agent, 119.*

Demurrage charges on lumber consigned to Norfolk, Va., for "Belt Line delivery," but held short of destination by line-haul carrier for payment of freight charges and disposition orders before turning over to switching line, found unlawful. Cars were not delivered to the Belt Line to whom disposition orders were given and line-haul carrier failed to make inquiry of such Belt Line in respect thereto. Reparation awarded. *Excelsior Shook & Lumber Co. v. S. A. L. Ry. Co., 241.*

Where no rule is published requiring payment of transportation charges prior to turning shipments over to a delivering line, shippers are not on notice of any such practice or requirement. A shipper does all that is required when he notifies the delivering line shown in the billing, of such disposition of the cars as is desired, and to escape responsibility for failure to effect delivery called for, the line-haul carrier must clearly and unequivocally show that the delivering line had knowledge of the arrival of the cars and that they were being held for its account. *Id. (243-244.)*

Combination rate on canned tomatoes from Greenwich, N. J., to pier 28, New York, found not unreasonable as compared with lower rate which could have been obtained by specifying Central delivery, which delivery could have been used without inconvenience or disadvantage, or with rate to Wallabout station, a Pennsylvania delivery in Brooklyn, N. Y. *Williams & Co. v. Director General, as Agent, 305.*

Because of an accumulation of barges alongside vessel, delivery from car float to vessel could not be made. Cars were floated to float bridge adjacent to pier and thence moved along tracks and out upon the pier for delivery, for which service a class rate was assessed. *Held*: Extra movement to float bridge and beyond amounted to a reconsignment. Charges assessed found unreasonable to extent they exceeded those provided in a local switching tariff for similar movements to cold storage warehouses, plus a reconsignment charge. Reparation awarded. *Armour & Co. v. Director General, as Agent, 760.*

**DEMURRAGE.** *See also* DETENTION.

Demurrage charges on lumber consigned to Norfolk, Va., for "Belt Line delivery," but held short of destination by line-haul carrier for payment of freight charges and disposition orders before turning over to switching line, found unlawful. Cars were not delivered to the Belt Line to whom disposition orders were given and line-haul carrier failed to make inquiry of such Belt Line in respect thereto. Reparation awarded. *Excelsior Shook & Lumber Co. v. S. A. L. Ry. Co., 241.*

## DEMURRAGE—Continued.

The right of carriers to assess charges for undue detention of equipment existed at common law, and such charges are now published in schedule form in accordance with the provisions of the act. The Commission may require carriers to maintain reasonable demurrage charges which are in part compensation for use of equipment, and in part penalties for detention of cars. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393 (396-397).

On account of various strikes embargoes were placed against certain points. Demurrage charges assessed on shipments on which reconsignment to such points refused, found illegal as applicable tariff contained no provision prohibiting reconsignment to embargoed points. Reparation awarded. *Schaefer v. L. V. R. R. Co.*, 549.

Demurrage charges assessed on shipments originating during existence of an embargo, but which were ordered reconsigned subsequent to the removal of such embargo, found unreasonable. Such a rule was condemned by the Commission in the *Reconsignment Case*, 47 I. C. C., 590, and other cases. Reparation awarded. *Id.* (549).

Although applicable tariff governing reconsignment did not contain a limitation upon reconsignment to embargoed points, carrier contended that the provision in a general reconsignment tariff was broad enough to put shippers upon notice, and that demurrage accruing thereunder was legally assessed. *Held*: This position untenable, since shipper's rights and obligations are determined by the applicable governing tariff and not by knowledge of carrier's usual practice indicated by other general tariffs. *Id.* (551).

Period of 15 days, or as subsequently increased to 30 days, within which claims may be presented for the cancellation or refunding of demurrage charges assessed or collected on account of bunching of cars for unloading or reconsigning, found not unreasonable as compared with period of six months for filing of loss and damage claims. Preparation of claims for loss and damage involves the collection of considerably more data than under the bunching rule and the present provision is national in scope and apparently satisfactory to practically all shippers. *Carnation Milk Products Co. v. Director General*, as Agent, 553.

Embargoes brought about by severe congestion of traffic were in effect when shipments originated, but since tariffs contained no restriction against reconsignment to embargoed points, demurrage charges assessed for car detention resulting therefrom, found illegal. Reparation awarded. *Krauss Bros. Lumber Co. v. Director General*, as Agent, 637.

Obligation to accept articles tendered for transportation is governed by general principles of law; to consign, by rules lawfully on file with the Commission. The right to refuse shipments temporarily for good cause by establishment of embargoes, which are not required to be filed, is recognized. The right to consign depends entirely upon the construction of the rules, which are required to be filed in the same manner as rates. If carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for detention when it is not directly responsible therefor and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. *Id.* (639).

**DEMURRAGE—Continued.**

The liability of carriers for general damages growing out of their failure to furnish cars is determinable by the courts. The law does not require them to define their liability by tariff publication and the Commission has no jurisdiction to require carriers to establish reciprocal demurrage regulations. Deposit for Live-Poultry Car Ordered, 653 (656).

Tack plate shipped from Vandergrift, Pa., to Baltimore, Md., for export, but due to vessel for which originally intended being commandeered by one of the nations then at war, was reconsigned to New York, N. Y., or Philadelphia, Pa., and exported from those ports. *Held*: Domestic demurrage charges accruing at Baltimore found not unreasonable following *Loucky Lumber Co.*, 58 I. C. C., 113, and *Heid Brothers*, 55 I. C. C., 416. *British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co.*, 661.

**DENSITY OF TRAFFIC.** See **VOLUME OF TRAFFIC.**

**DEPOSIT.**

Proposed schedules which would require shippers to deposit \$10 for each live-poultry car ordered, such deposit to be refunded only if loading of the car be commenced within 48 hours following its placement, found not justified in part and ordered cancelled without prejudice to the filing of new schedules modified in accordance with suggestions in the report. Deposit for Live-Poultry Car Ordered, 653.

Approximately 8 per cent of live-poultry cars were not loaded at point at which originally placed. Contention that only those at fault should be penalized and those not responsible for the abuse should not be inconvenienced by a proposed rule which would require a deposit for each car ordered, refund to be made only if loading be commenced within 48 hours after placement. *Held*: Percentage sufficiently high to justify some action on the part of respondents to correct the evil. *Id.* (654-655).

**DESIRABILITY OF TRAFFIC.**

Salt is desirable traffic, while nitrate of soda, a dangerous article from a transportation standpoint, is undesirable. *Du Pont de Nemours & Co. v. Director General*, as Agent, 501 (502).

**DETENTION.** See also **DEMURRAGE.**

Contention that the language of the federal control act did not give power to the President or the Director General to assess a penalty; and that Congress could not have given either of them that power because the imposition of a penalty is a legislative function which can not be delegated. *Held*: The Director General was authorized to inaugurate any reasonable and just regulation and practice which he might find necessary to eliminate the abuse of excessive and unreasonable detention of freight cars. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393 (396).

The right of carriers to assess charges for undue detention of equipment existed at common law, and such charges are now published in schedule form in accordance with the provisions of the act. The Commission may require carriers to maintain reasonable demurrage charges which are in part compensation for use of equipment, and in part penalties for detention of cars. *Id.* (396-397).

If a shipper habitually delays cars for unloading at destination the carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment; if the shipper habitually delays loading cars the carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. *Id.* (405).

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## DETENTION—Continued.

A shipper has no inherent right to detain a car beyond the free time and thus prevent it from being used for transportation by other shippers. Car shortages have resulted in incalculable loss in the past both to the carriers and the shipping public as a whole, and when it appears that shippers detain cars for purposes other than those necessary for proper transportation the carriers are justified in taking steps to prevent such abuses. *Id.* (407).

DIFFERENTIALS. *See also* ARBITRARIES.

Upon further hearing, former report 48 I. C. C., 812, reasonable maximum differentials prescribed on shipments of wheat, flour, and articles taking the same rates to and from points in Texas differential territory. Railroad Commission of Louisiana *v.* A. H. T. Ry. Co., 4.

Fact that in the *Midcontinent Oil Case*, 36 I. C. C. 109, and in subsequent cases which have followed it, a differential of 5 cents was established between the rates on crude and refined oils does not warrant the conclusion that this should be the differential under all circumstances, and particularly where the rates are larger in amount. Utah State Automobile Asso. *v.* A., T. & S. F. Ry. Co., 8 (17).

Increases under general order No. 28 of Director General on bituminous coal from Linton group in southwestern Indiana to destinations northeast of Indianapolis, Ind., during federal control, resulted in widening the differential to such points over Indianapolis which existed prior to such increases. Subsequently rates reduced, but former differential not restored. *Held*: Neither Director General's departure from terms of his general orders nor the subsequent reduction of rates is necessarily proof that rates were unreasonable. Union Traction Co. of Indiana *v.* Director General, as Agent, 157.

Rate on pig iron from Pottstown, Pa., to San Francisco, Calif., for export, found not unreasonable or unduly prejudicial because the spread in the rates on that article and manufactured iron and steel articles exceeded 5 cents, the basis subsequently established. Shibakawa & Co. (Inc.) *v.* P. & R. Ry. Co., 261.

Maintenance of rates on commodities, the rates on which are stated on a graded or mileage basis from and to points on the Wilder and Murphy branches of the Oregon Short Line, higher than from and to points on the Emmett and Boise branches, found to result in undue prejudice to extent that the branch-line differentials on the former exceed those maintained on like traffic from and to points on the latter branches for like distances from the main-line junction. State of Idaho, *ex rel v.* Director General, 330.

When points distributed over an extensive area are grouped and a blanket rate applied to or from all such points, the fact that points lying within that blanket are on a branch line does not argue as strongly that there should be a branch-line differential as when the rates are applied upon a graded basis. Whether or not there should be such a differential in connection with blanket rates depends in a large measure upon how extensive the blanket is. *Id.* (336-337).

Following *Arkansas Jobbers & Mfrs. Asso.*, 59 I. C. C., 662, rates on coarse grains 10 per cent less than those on wheat prescribed. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 475 (479).

## DIFFERENTIALS—Continued.

Rates on printing and writing paper, and on paper or paper articles grouped therewith, found unreasonable to the extent they exceed by more than 10 and 33½ per cent, respectively, the corresponding rates on newsprint paper. *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 571 (575, 583).

DIRECTOR GENERAL. *See* FEDERAL CONTROL.

DISCRIMINATION. *See also* PREFERENCES AND PREJUDICES.

Upon supplemental report, intrastate rates and charges of certain electric lines and certain short-line steam railroads, required by state authority to be maintained within Illinois, lower than the corresponding interstate rates and charges authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly preferential of intrastate shippers and localities, unduly prejudicial to interstate shippers and localities, and unjustly discriminatory against interstate commerce. Previous reports, 59 I. C. C., 350, and 60 I. C. C., 92. *Intrastate Rates Within Illinois*, 350.

DISTANCE RATES. *See also* MINIMUM CLASS SCALE.

Class and commodity rates between Meridian, Miss., Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., on the one hand, and certain points in Alabama within 200 miles of Meridian, on the other, proposed in compliance with the Commission's order in *Meridian Traffic Bureau*, 60 I. C. C., 5, for removal of undue prejudice found to exist against Meridian, found justified in some instances and not in others, and reasonable maximum distance scales prescribed. *Meridian Rate Case*, 179.

Proposal in distance tariff to add 100 constructive miles for crossing the Hudson River by bridge at Poughkeepsie, N. Y., found not justified. Whether resulting rates would be reasonable or unreasonable or what revenue would accrue are matters of speculation, competitive and other conditions would have to be considered in connection with each rate, and the extent to which such constructive mileage would be used is impossible of determination at the present time. The Commission is not warranted in giving approval to a proposal so vague, indefinite, and uncertain in its effect. *Constructive Mileage over Poughkeepsie Bridge*, 230.

If the cost of constructing and maintaining a bridge is 100 times greater than that for a mile of track, it does not follow that 100 constructive miles should be allowed for movement over the bridge in computing distance, upon which to base rates for transportation. *Id.* (233).

Class rates from Corinth, Miss., to points in Tennessee between Corinth and Jackson, Tenn., found unreasonable and unduly prejudicial to Corinth and its shippers, as compared with class rates to the same points from Jackson. Reasonable maximum distance rates prescribed. *Corinth Grocery Co. v. M. & O. R. R. Co.*, 320.

Rates on petroleum and products, and fuel oil, from complainant's refinery located near East Braintree, Mass., on the Fore River R. R. Corporation, a common carrier short line, to destinations in New England, found unreasonable and unduly prejudicial in favor of competitors located within the Providence, R. I., switching district and at other shipping points, to extent they exceeded the standard distance basis of rates applicable from such competing points to the same New England destinations. Reasonable joint rates prescribed and reparation awarded. *Massachusetts Oil Refining Co. v. B. & A. R. R. Co.*, 535.

## DISTANCE RATES—Continued.

Proportional class rates between west-bank Mississippi River crossings and Mason City, Iowa, on traffic originating at or destined to official territory east of the Indiana-Illinois state line, published by carriers pursuant to the Commission's orders in *Interior Iowa Cases*, 48 I. C. C., 39, found not unreasonable or unduly prejudicial. *Alter v. Director General, as Agent*, 619.

DISTURBANCE OF ADJUSTMENT. *See also* RESTORED RATES.

Increases applied under *Increased Rates, 1920*, 58 I. C. C., 220, on lumber and forest products from various states south of the Ohio River to c. f. a. and other defined territories, disturbed the relationship formerly existing between northern and southern producing points to common markets, and attributed to a general depression in the lumber industry. Rates as so increased found unreasonable for the future and reasonable basis bearing a closer relationship to that which existed prior to the increases prescribed. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68.

Rates on corn and oats were increased under general order No. 28 of the Director General to the wheat rate basis, while from and to other points in the same general territory such rates were increased but 25 per cent, not exceeding 6 cents, thereby disturbing the level of rates which had existed for a number of years. Subsequently rate parity restored by application of increases under that order without regard to the wheat rates. Rates charged during interim found unreasonable and reparation awarded. *Flanley Grain Co. v. Director General, as Agent*, 126.

Increases under general order No. 28 of Director General resulted in wideuening the differentials which existed prior to such increases. Subsequently rates reduced but former differential not restored. *Held*: Neither Director General's departure from terms of his general orders nor the subsequent reduction of rates is necessarily proof that rates were unreasonable. *Union Traction Co. of Indiana v. Director General, as Agent*, 157.

Findings in original report, 60 I. C. C., 583, that increases in rates on acid from Hillsboro, Ill., to certain Ohio River crossings were justified, modified on further hearing. Increases found to be no longer justified as rates from Hillsboro are no longer on the basis generally in effect in this part of c. f. a. territory and the rates from Copperhill, Tenn., to Cincinnati, Ohio, have the effect of eliminating Hillsboro from that market. Acid from Hillsboro to Ohio River Points, 383.

Rates on green coffee from New Orleans, La., to Jackson, Miss., found not unreasonable prior to January 28, 1920, on which date such rates were revised to remove a disparity and restore a long continued relationship which was disrupted by the increases of the Director General under general order No. 28. Such rates were not, distance considered, above the general level of rates to points in Mississippi. Rates on and after January 28 found unreasonable and reasonable rates prescribed and reparation awarded. *MacGowan Coffee Co. v. I. C. R. R. Co.*, 389.

Due to the application of increases under general order No. 28 of the Director General, the differential relationship of rates on bituminous coal from group mines in Indiana and Illinois to Chicago, Ill., disrupted. Subsequently preexisting relationship restored. *Held*: Failure to observe the terms of that order, filed with the Commission by the President through his duly appointed agent, does not prove that the rates established thereunder were unreasonable. *Carney v. Director General, as Agent*, 671.



**DISTURBANCE OF ADJUSTMENT—Continued.**

Proposed increased rate on window glass from Kansas and Oklahoma points to Sioux Falls, S. Dak., which would disturb the long standing spread between the rates to Sioux Falls and practically every other related point, found not justified. Window Glass from Kansas and Oklahoma to Sioux Falls, 757.

**DIVERSION. See also RECONSIGNMENT.**

Negligence can not be imputed to carrier's agent for failure to divert a shipment before arrival at originally billed destination where only information shown in reconsignment order was car number and initial and that car was in transit to shipper at original destination. Shipper failed to give point of origin, route of movement, commodity, or any other information, and made no request to protect the through rate. Facts sufficient to justify agent in holding the order until arrival of the car and executing the instructions of the shipper at that time. Reeves Coal & Dock Co. v. Director General, as Agent, 469.

Reason and common prudence would dictate that a shipper asking for diversion of a car in transit should give such information as will enable the carriers to determine not only the character of the shipment but also between what points it is moving, in order that they may form some idea of where it can be intercepted. Id. (471).

**DIVISIONS.**

Cancellation of joint rates can not be justified on the ground that the divisions thereof are unsatisfactory. If satisfactory divisions can not be agreed upon between carriers, that matter may be presented to the Commission in an appropriate proceeding. Routing Restrictions on Lumber, 56.

Upon reargument, divisions of joint class rates and similar joint commodity rates which divide on the class-rate basis, other than those in which the Bangor & Aroostook R. R. Co. participates, accruing to certain carriers in New England, found unjust, unreasonable, and inequitable for the future, and readjustment prescribed. Former report 62 I. C. C., 513. New England Divisions, 196.

Both the legislative history and the provisions of the transportation act, 1920, make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the nation, and the principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest. Upon this foundation rests the provision of paragraph (6) of section 15 of the interstate commerce act. Id. (198).

The Commission's power over divisions is founded upon the public interest. Carriers are mutually dependent parts of the transportation system; the public interest requires that all essential parts be maintained in effective working condition; the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. Id. (199).

## DIVISIONS—Continued.

It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. *Id.* (199).

The group plan of increasing rates followed in *Increased Rates*, 1920, 58 I. C. C., 220, necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned, and due regard for the public interest demands that the Commission give these fortuitous inequalities consideration in the fixing of divisions. *Id.* (199).

It is inevitable that when freight rates are increased the carrier that brings its fuel and other supplies from a distance will suffer disproportionately. *Id.* (200).

In a case involving divisions the Commission may, when the public interest so requires, grant immediate relief subject to later readjustments, as it has done in cases involving general increases or reductions in rates. *Id.* (204).

Divisions allowed the Chicago & Eastern Illinois R. R. Co., out of the joint rates on traffic moving between points on that line, via Thebes, Ill., and interstate destinations on the St. L.-S. F. Ry. Co., interchanged with the latter carrier at Chaffee, Mo., except where such joint rates are divided on the basis of a mileage prorate to and from Thebes or Chaffee, found unjust, unreasonable, and inequitable. Reasonable divisions prescribed. *Jackson v. St. L.-S. F. Ry. Co.*, 359.

Although divisions of rates can not be based wholly on the financial conditions of carriers, it is one of the elements that may properly be considered by the Commission. *Id.* (369).

Proposed cancellation of joint rates from points on the Interstate Public Service Co. and connecting lines to points on the Indiana, Columbus & Eastern Traction Co. and points beyond, found not justified. Proposed cancellation is an outgrowth of the inability of carriers to agree upon divisions. Rate Cancellation from Indiana to Ohio, 449 (451).

The shipping public must not be made to suffer because of a disagreement between carriers over divisions. The act prescribes a method for adjusting such controversies. *Id.* (451).

That a carrier deducts an amount greater than is paid by it for the use of a bridge before dividing a joint rate with its connections does not of itself confer jurisdiction upon the Commission to prescribe the amount to be paid for that use. That portion of the act which confers upon the Commission jurisdiction to establish just divisions of joint rates refers only to divisions "between the carriers subject to this act." *Keokuk & Hanrliton Bridge Co. v. W. Ry. Co.*, 545 (548).

In attempting to justify the reasonableness of a joint rate from points in Canada to points in the United States, the American carriers contended that the division received by them for the haul within the United States was not unreasonable or excessive. *Held*: Commission must consider the reasonableness of the joint rate as a whole. *International Nickel Co. v. Director General*, as Agent, 627 (631).

DOMESTIC BILL OF LADING. *See* BILL OF LADING.

DOMESTIC RATES. *See* EXPORT AND DOMESTIC; IMPORT AND DOMESTIC.

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**DOUBLE CHARGE.**

A charge is not necessarily unlawful because it is made up of two separately published charges. The real question is as to the propriety of the aggregate charge. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393 (397).

**DOUBLE INCREASE.**

Both factors of combination rate increased under general order No. 28 of the Director General. Contention that failure of carriers to amend their tariffs to comply with freight rate authority subsequently issued directing the application of increases under that order but once to the through rate, resulted in unreasonable rates, *Held*: Higher rates charged and legally applicable may not be condemned upon the mere showing that carriers failed to comply with instructions issued by the Director General. *Tuffi Bros. Pig Iron & Coke Co. v. Director General*, as Agent, 129.

Combination rates on coal, both factors of which were increased under general order No. 28 of the Director General, found not unreasonable as compared with lower joint rates subsequently established, constructed by addition of but a single increase to the aggregates of the several factors. The application of general increases under that order to the several factors of a combination does not, in and of itself, warrant a condemnation of the increased aggregate rate. *Nye Schneider Fowler Co. v. Director General*, as Agent, 145.

Applying increases under general order No. 28 of the Director General to each factor of combination rates on smelting coal moving in bulk to St. Louis, Mo., there sacked and forwarded to destinations in western territory, while applying but a single increase to the through rates on such coal when moving through in bulk found not unreasonable. Combination clauses under that order relate specifically to through continuous movements, while the coal sacked by complainant moves into and out of its yards in distinct and separate movements. *Romann & Bush Pig Iron & Coke Co. v. Director General*, as Agent, 147.

Combination rates on bituminous and small sizes of anthracite coal from points in Pennsylvania and Fairmont, W. Va., to Rumford and South Brewer, Me., both factors of which were increased under general order No. 28 of the Director General, found unreasonable as compared with rates between other points to which but a single increase to the through rate was added. Reparation awarded to basis of rates subsequently established. *Oxford Paper Co. v. Director General*, as Agent, 159.

Rates constructed by the application of the increases under general order No. 28 of the Director General separately to both the applicable rate and out-of-line charge named in a tariff separate from the tariffs naming the rates, instead of but once to the aggregate of such charges, found not unreasonable. Lack of compliance with general order No. 28 does not of itself, afford a basis for a finding of unreasonableness. *Buhler Mill & Elevator Co. v. Director General*, as Agent, 613.

**DUTY OF CARRIER.**

The positive duty of carriers under section 1 goes no farther than to provide such facilities as are reasonably sufficient for the business at particular points. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44 (49).

**DUTY OF CARRIER—Continued.**

The Commission must assume that Congress legislated on the subject of the duties of common carriers by railroad concerning the receipt and delivery of live stock with full knowledge of the law as declared by the Supreme Court in *Covington Stock-Yards Co. v. Keith*, 139 U. S., 128, and therefore with the knowledge and purpose that public stockyards would be open to all shippers and consignees as the terminals of the carriers. *Id.* (51).

The furnishing of storage is not a primary function of the railroads. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393 (407).

**DUTY OF COMMISSION.**

The interstate commerce act requires a practical administration, and prompt action where that is necessary in the public interest. *New England Divisions*, 196 (204).

**DUTY OF SHIPPER.**

Reason and common prudence would dictate that a shipper asking for diversion of a car in transit should give such information as will enable the carriers to determine not only the character of the shipment but also between what points it is moving, in order that they may form some idea of where it can be intercepted. *Reeves Coal & Dock Co. v. Director General*, as Agent, 469 (471).

**EARNINGS.**

In and of themselves, car-mile earnings as low as 12 or 13 cents on wool in the grease found not excessive. *Botany Worsted Mills v. Director General*, as Agent, 556 (558-559).

**EASTBOUND AND WESTBOUND.**

Empty car movement predominates westbound. Empties are in greater demand for eastbound than for westbound loading. *La Crosse Shippers' Asso. v. A. A. R. R. Co.*, 371 (373).

**ECONOMIC CONDITIONS. See COMMERCIAL AND ECONOMIC CONDITIONS.****EFFECTIVE DATE.**

Rates named in a tariff published after the issuance of general order No. 28 of the Director General, but not to become effective until after the effective date of that order, found to be subject to the increase of 25 per cent provided thereunder. *Growers Rice Milling Co. v. Director General*, as Agent, 165.

**ELECTRIC LINES.**

Upon supplemental report, intrastate rates and charges of certain electric lines, required by state authority to be maintained within Illinois, lower than the corresponding interstate rates and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate shippers and localities, unduly prejudicial to interstate shippers and localities, and unjustly discriminatory against interstate commerce. Previous reports, 59 I. C. C., 350, and 60 I. C. C., 92. *Intrastate Rates Within Illinois*, 350.

Proposed cancellation of joint rates from Indianapolis, Ind., over the Terre Haute, Indianapolis & Eastern Traction Co. and the Dayton & Western Traction Co. to points on the Indiana, Columbus & Eastern Traction Co. east of Dayton, Ohio, and points on connecting lines; and proposed cancellation of joint rates from points on the Interstate Public Service Co. and connecting lines to points on the Indiana, Columbus & Eastern Traction Co., and points beyond; which will result in the application of higher combinations, found not justified. *Rate cancellation from Indiana to Ohio*, 449.

## EMBARGOES.

Contention that carriers having established through rates and provided for reconsignment it was unlawful to assess penalty charges upon shipments held on account of embargoes, notwithstanding tariff provisions to the effect that reconsignment orders would not be accepted to a point against which an embargo was in force at the time shipment was forwarded from point of origin, not sustained. *American Wholesale Lumber Assn. v. Director General*, as Agent, 393 (398).

The law does not require that embargo notices be published as schedules are published. As a practical matter, the conditions necessitating embargoes frequently develop and end quickly. To wait until a schedule could be published and become effective would, therefore, defeat the object sought. On the other hand, to keep an embargo in effect until a schedule could be legally canceled would work unwarranted hardship upon the public. *Id.* (398).

If a shipper habitually delays cars for unloading at destination, carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment; if shipper habitually delays loading cars carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. *Id.* (405).

On account of various strikes embargoes were placed against certain points. Demurrage charges assessed on shipments on which reconsignment to such points refused, found illegal as applicable tariff contained no provision prohibiting reconsignment to embargoed points. Reparation awarded. *Schaefer v. L. V. R. R. Co.*, 549.

Demurrage charges assessed on shipments originating during existence of an embargo, but which were ordered reconsigned subsequent to the removal of such embargo, found unreasonable. Such a rule was condemned by the Commission in the *Reconsignment Case*, 47 I. C. C., 500, and other cases. Reparation awarded. *Id.* (549).

Although applicable tariff governing reconsignment did not contain a limitation upon reconsignment to embargoed points, carrier contended that the provision in a general reconsignment tariff was broad enough to put shippers upon notice, and that demurrage accruing thereunder was legally assessed. *Held*: This position untenable, since shipper's rights and obligations are determined by the applicable governing tariff and not by knowledge of carrier's usual practice indicated by other general tariffs. *Id.* (551).

Embargoes brought about by severe congestion of traffic were in effect when shipments originated, but since tariffs contained no restriction against reconsignment to embargoed points, demurrage charges assessed for car detention resulting therefrom, found illegal. Reparation awarded. *Krauss Bros. Lumber Co. v. Director General*, as Agent, 637.

Obligation to accept articles tendered for transportation is governed by general principles of law; to reassign, by rules lawfully on file with the Commission. The right to refuse shipments temporarily for good cause by establishment of embargoes, which are not required to be filed, is recognized. The right to reassign depends entirely upon the construction of the rules, which are required to be filed in the same manner as rates. If carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for detention when it is not directly responsible therefor and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. *Id.* (639).

**EMERGENCY SHIPMENT.** *See* SPORADIC MOVEMENT.

**EMPTY MOVEMENT.**

Empty car movement predominates westbound. Empties are in greater demand for eastbound than for westbound loading. *La Crosse Shippers' Asso. v. A. A. R. R. Co.*, 371 (373).

**ENGINES.** *See* LOCOMOTIVES.

**EQUALIZING RATES.**

Proposed increased rates on grain and grain products, c. l. and l. c. l., from Memphis, Tenn., to Carolina territory, when originating in Arkansas, Oklahoma, Texas, and Louisiana, which will equalize the rates from the southwest when moving through Memphis with those from so-called equalization territory when moving through gateways north of Memphis, found justified. *Grain and Grain Products from Memphis*, 19.

**EQUIPMENT.** *See also* LOCOMOTIVES.

Upon the resumption of corporate control and operation, the Pennsylvania R. R. Co. awarded to the Baldwin Locomotive Works a contract for the repair of 200 locomotives, while maintaining shops on its own line for such work. Upon investigation, the cost to respondent was over \$3,000,000 in excess of the cost at which the work might have been done in its own shops, and included work paid for twice in some instances. Such work could have been done in respondent's own shops within a reasonable time by an appropriate coordination of efforts and reasonable added exertion. *Construction and Repair of Ry. Equipment: Penn. R. R. Co.*, 694.

Contracts negotiated by the Atlantic Coast Line R. R. Co. in 1920 for the repair of 30 of its locomotives by the Baldwin Locomotive Works, although based upon excessive costs, not found, in the circumstances disclosed, to have been unwarranted. *Construction and Repair of Ry. Equipment: A. C. L. R. R. Co.*, 727.

Under contracts negotiated in 1920 with certain locomotive construction companies, 195 locomotives of the New York Central R. R. were sent to contract shops for classified repairs. Upon investigation the cost to respondent was in the neighborhood of \$3,000,000 in excess of the cost of similar work in its own shops, and such respondent could have repaired at least the greater number of the locomotives in its own shops within the time in which the contract work was done. *Construction and Repair of Ry. Equipment: N. Y. C. R. R. Co.*, 732.

**ERROR.**

Carrier's agent billed shipments to wrong destination and teamster, employed by complainant to load cars only, accepted and signed the bills of lading. *Held*: As authority not delegated to teamster to direct the movement of the cars, the acceptance and signing of the bills of lading by him did not bind complainant. Shipments found misrouted and reparation awarded. *Phoenix Refining Co. v. A., T. & S. F. Ry. Co.*, 303.

**ESTIMATED WEIGHT.** *See* WEIGHT.

**EVIDENCE.** *See also* PROOF.

Defendants contended that allegations of complaint were not sufficiently explicit to put them on notice that complainants would present their case with reference mainly to branch-line points. When asked if they desired rehearing or further hearing to answer complainant's case as to such branches, defendants stated they did not. *Held*: Complainants were within allegations of complaints in presenting evidence of the rates on these branch lines to show undue prejudice. *State of Idaho, ex rel v. Director General*, 330 (332).

## EXCEPTIONS.

Rates charged on intrastate shipments of box board moving during federal control found legally applicable and not unreasonable, as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Ft. Wayne Corrugated Paper Co. v. Director General*, as Agent, 669.

Exceptions to the classification publishing rates as percentages of certain class rates does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Id.* (670).

## EXPORT AND DOMESTIC.

Tack plate shipped from Vandergrift, Pa., to Baltimore, Md., for export, but due to vessel for which originally intended being commandeered by one of the nations then at war, was reconsigned to New York, N. Y., or Philadelphia, Pa., and exported from those ports. *Held*: Domestic demurrage charges accruing at Baltimore found not unreasonable following *Loucky Lumber Co.*, 58 I. C. C., 113, and *Heid Brothers*, 55 I. C. C., 416. *British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co.*, 661.

## EXPORT BILL OF LADING.

Upon further hearing, certain conditions in the through export bill of lading, heretofore prescribed by the Commission in 64 I. C. C., 347, modified in certain particulars upon recommendations made by the United States Shipping Board. *Export Bill of Lading*, 697.

## EXTENSION OF LINE.

Complaint praying for the issuance of an order under paragraph (21) of section 1 of the act requiring the C., B. & Q. R. R. Co. to extend its line from Ericson to Chambers, Nebr.; *Held*: Proposed extension is not reasonably required in the interest of public convenience and necessity and the issuance of the order prayed for would require defendant to invest a large sum of money in an undertaking which at the outset would not be a financial success, and would not hold out hope for the future. *Cooke v. C., B. & Q. R. R. Co.*, 452.

An order requiring a carrier to extend its line in the interest of public convenience and necessity, and involving as a necessary incident expenses which would impair the ability of the carrier to perform its duty to the public would be a contradiction. On the other hand, no order could be issued requiring an extension, unless reasonably required in the interest of public convenience and necessity. Both of the conditions must be satisfied. *Id.* (452-453).

FACTOR. *See also* PROPORTIONAL RATES.

Increased charges initiated by the Director General under general order No. 28 and assessed on stone moving during federal control from points in the Indiana limestone district to various destinations found unreasonable to extent that charges for preliminary services from quarries to mills and similar movements exceeded charges subsequently established. Reparation awarded. *Bedford Cut Stone Co. v. Director General*, as Agent, 26.

**FACTOR—Continued.**

Class rates on rabbits, not dressed, from points in Kansas and Nebraska to Chicago, Ill., Detroit, Mich., Philadelphia, Pa., and New York, N. Y., found unreasonable to extent that charges on shipments to Chicago exceeded lower commodity rates subsequently established, and through combination rates on shipments to points beyond Chicago found unreasonable to extent that components east thereof exceeded the third-class rates contemporaneously in effect. Reparation awarded. *Jerpe Commission Co. v. Director General*, as Agent, 131.

Combination rates to and from Rivesville Junction, W. Va., on bituminous coal moving from Hood mine, South Rivesville, W. Va., to destinations in New York and New Jersey, found not unreasonable due to the factor from the mine to the junction point. No other shipments have moved over these routes, no request has ever been made for a specific rate from the mine to the junction and no future movement is contemplated. *Fairmont & Cleveland Coal Co. v. Director General*, as Agent, 293.

Combination through rate on bauxite ore from Republic, Ga., to Chicago Heights, Ill., found not unreasonable because of the subsequent reduction of the factor from Ohio River crossings. Few shipments have been made from and to these points and no movement in the near future is contemplated. *General Chemical Co. v. Director General*, as Agent, 443.

Combination rates on fuller's earth from Midway, Quincy, and Ellenton, Fla., to Oklahoma City, Okla., found unreasonable and unduly prejudicial to extent that the components from Memphis, Tenn., to Oklahoma City exceeded the components from Memphis to Cushing, Okmulgee, Tulsa, and Muskogee, Okla., and Independence and Arkansas City, Kans. Reparation awarded. *Choate Oil Corp. v. Director General*, as Agent, 562.

**FEDERAL CONTROL.**

Increased charges initiated by the Director General under general order No. 28 and assessed on stone moving during federal control from points in the Indiana limestone district to various destinations found unreasonable to extent that charges for preliminary services from quarries to mills and similar movements exceeded charges subsequently established. Reparation awarded. *Bedford Cut Stone Co. v. Director General*, as Agent, 26.

Carriers established the 4.5 cent increase in lieu of the 25 per cent increase on petroleum and products under general order No. 28 of the Director General, within western territory, and from that territory to the southeast. Failure to establish a like adjustment to southeastern destinations from Wood River and East St. Louis, Ill., and between points within the southeast until tariffs could be published establishing rates reflecting the 4.5 cent increase for both federal and nonfederal roads, found not to have resulted in unreasonable rates on shipments moving during interim. *Standard Oil Co. v. Director General*, as Agent, 37.

Rates on corn and oats were increased under general order No. 28 of the Director General to the wheat rate basis, while from and to other points in the same general territory such rates were increased but 25 per cent, not exceeding 6 cents, thereby disturbing the level of rates which had existed for a number of years. Subsequently rate parity restored by application of increases under that order without regard to the wheat rates. Rates charged during interim found unreasonable and reparation awarded. *Flanley Grain Co. v. Director General*, as Agent, 128.



## FEDERAL CONTROL—Continued.

Both factors of combination rate increased under general order No. 28 of the Director General. Contention that failure of carriers to amend their tariffs to comply with freight rate authority subsequently issued directing the application of increases under that order but once to the through rate, resulted in unreasonable rates, *Held*: Higher rates charged and legally applicable may not be condemned upon the mere showing that carriers failed to comply with instructions issued by the Director General. *Tuffli Bros. Pig Iron & Coke Co. v. Director General, as Agent*, 129.

Rule for disposition of fractions under general order No. 28 of the Director General applied only to rates quoted in dollars or dollars and cents per ton. Such rule did not, and could not, by any reasonable interpretation qualify another rule, which was complete in itself and specifically provided for the application of rates stated in cents per ton or other unit. Shipments found overcharged and reparation awarded. *Hercules Mining Co. v. Director General, as Agent*, 140.

Combination rates on coal, both factors of which were increased under general order No. 28 of the Director General, found not unreasonable as compared with lower joint rates subsequently established, constructed by addition of but a single increase to the aggregate of the several factors. The application of general increases under that order to the several factors of a combination does not, in and of itself, warrant a condemnation of the increased aggregate rate. *Nye Schneider Fowler Co. v. Director General, as Agent*, 145.

Applying increases under general order No. 28 of the Director General to each factor of combination rates on smithing coal moving in bulk to St. Louis, Mo., there sacked and forwarded to destinations in western territory, while applying but a single increase to the through rates on such coal when moving through in bulk, found not unreasonable. Combination clauses under that order relate specifically to through continuous movements, while the coal sacked by complainant moves into and out of its yards in distinct and separate movements. *Romann & Bush Pig Iron & Coke Co. v. Director General, as Agent*, 147.

Increases under general order No. 28 of Director General resulted in widening differentials which existed prior to such increases. Subsequently rates reduced, but former differentials not restored. *Held*: Neither Director General's departure from terms of his general orders nor the subsequent reduction of rates is necessarily proof that rates were unreasonable. *Union Traction Co. of Indiana v. Director General, as Agent*, 157.

Combination rates on bituminous and small sizes of anthracite coal from points in Pennsylvania and Fairmont, W. Va., to Rumford and South Brewer, Me., both factors of which were increased under general order No. 28 of the Director General, found unreasonable as compared with rates between other points to which but a single increase to the through rate was added. Reparation awarded to basis of rates subsequently established. *Oxford Paper Co. v. Director General, as Agent*, 159.

Whether rates made effective under general order No. 28 of the Director General were unreasonable or otherwise unlawful must be determined upon considerations apart from the construction of that order. *Id.* (163).

Rates named in a tariff published after the issuance of general order No. 28 of the Director General, but not to become effective until after the effective date of that order, found to be subject to the increase of 25 per cent provided thereunder. *Growers Rice Milling Co. v. Director General, as Agent*, 165.

## FEDERAL CONTROL—Continued.

Whether the resulting rate was unreasonable or otherwise unlawful is the controlling fact to be determined in passing upon increases promulgated under general order No. 28 of the Director General, and not whether a rate was increased in strict compliance with the terms or the intention of that order. *Citizens Coal Mining Co. v. Director General, as Agent*, 271 (272).

Where carrier was not under federal control, its absorption provisions on intrastate traffic were not subject to the Commission's jurisdiction during the federal control period. *Id.* (273).

Contention that the language of the federal control act did not give power to the President or the Director General to assess a penalty; and that Congress could not have given either of them that power because the imposition of a penalty is a legislative function which can not be delegated. *Held*: The Director General was authorized to inaugurate any reasonable and just regulation and practice which he might find necessary to eliminate the abuse of excessive and unreasonable detention of freight cars. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393 (396).

On shipments moving during federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of another line to which shipper might have delivered the shipment had he so elected. *Held*: Shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under a unified and coordinated national control and not in competition." *Mulkey Salt Co. v. Director General, as Agent*, 441.

Rates on gasoline, in tank-car loads, as originally increased 25 per cent under general order No. 28 of the Director General, found not unreasonable as compared with lower rate subsequently established when such rates were readjusted by the substitution of a flat 4.5 cent increase in lieu of 25 per cent. *Wofford Oil Co. v. Director General, as Agent*, 509.

In cases arising out of federal control neither the percentage nor the amount by which a rate was increased under general order No. 28 or other freight rate authorities of the Director General constitutes proof of unreasonableness. Any general increase necessarily disturbs preexisting rates, either by varying amounts, if it be a percentage increase, or by varying percentages, if it be a flat increase. *Id.* (510).

Rates constructed by the application of the increases under general order No. 28 of the Director General separately to both the applicable rate and out-of-line charge named in a tariff separate from the tariffs naming the rates, instead of but once to the aggregate of such charges, found not unreasonable. Lack of compliance with general order No. 28 does not, of itself, afford a basis for a finding of unreasonableness. *Buhler Mill & Elevator Co. v. Director General, as Agent*, 613.

The fact that rates were not established in strict conformity with the provisions of general order No. 28 of the Director General is insufficient in itself to support a finding of unreasonableness. *Central Illinois Light Co. v. Director General, as Agent*, 623 (626).

**FEDERAL CONTROL—Continued.**

Different rates were in effect over two routes between the same points. Routes practically the same in length and subject to the same transportation conditions. *Held*: In view of the fact that carriers were operated under a unified and coordinated national control, and not in competition, it was unreasonable for the Director General to maintain a higher rate over one route than contemporaneously applied over the other. *American Agricultural Chemical Co. v. Director General, as Agent*, 650.

Excluding the period of federal control as provided in section 206 (f) of the transportation act, 1920, claim for reparation for causes of action arising prior to federal control, found not barred by the statute of limitations and within the Commission's jurisdiction. *British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co.*, 661.

Domestic rate on import shipments of kapok, moving from San Francisco, Calif., to Chicago, Ill., New York, N. Y., and Boston, Mass., assessed as a result of the cancellation of all import rates by the Director General under general order No. 28, found unreasonable to extent it exceeded import rate subsequently established on feathers and certain kinds of fiber with which kapok is fairly comparable. Reparation awarded. *Dutton Co. v. Director General, as Agent*, 663.

Rates charged on intrastate shipments of box board, moving during federal control, found legally applicable and not unreasonable, as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Ft. Wayne Corrugated Paper Co. v. Director General, as Agent*, 669.

Due to the application of increases under general order No. 28 of the Director General, the differential relationship of rates on bituminous coal from group mines in Indiana and Illinois to Chicago, Ill., disrupted. Subsequently preexisting relationship restored. *Held*: Failure to observe the terms of that order, filed with the Commission by the President through his duly appointed agent, does not prove that the rates established thereunder were unreasonable. *Carney v. Director General, as Agent*, 671.

**FILING AND POSTING.**

The law does not require that embargo notices be published as schedules are published. As a practical matter, the conditions necessitating embargoes frequently develop and end quickly. To wait until a schedule could be published and become effective would, therefore, defeat the object sought. On the other hand, to keep an embargo in effect until a schedule could be legally canceled would work unwarranted hardship upon the public. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393 (308).

## FILING AND POSTING—Continued.

Obligation to accept articles tendered for transportation is governed by general principles of law; to reconsign, by rules lawfully on file with the Commission. The right to refuse shipments temporarily for good cause by establishment of embargoes, which are not required to be filed, is recognized. The right to reconsign depends entirely upon the construction of the rules, which are required to be filed in the same manner as rates. If carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for detention when it is not directly responsible therefor and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. *Krauss Bros. Lumber Co. v. Director General, as Agent*, 637 (639).

## FINANCIAL CONDITIONS.

An unfavorable financial condition of carriers does not preclude the Commission from finding particular rates or rates on particular commodities to be unreasonable when the facts are sufficient to justify such a finding. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68 (73).

The Commission's power over divisions is founded upon the public interest. Carriers are mutually dependent parts of the transportation system; the public interest requires that all essential parts be maintained in effective working conditions; the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. *New England Divisions*, 196 (199).

It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. *Id.* (199).

Although divisions of rates can not be based wholly on the financial conditions of carriers, it is one of the elements that may properly be considered by the Commission. *Jackson v. St. L.—S. F. Ry. Co.*, 359 (369).

FINDINGS OF COMMISSION. See ORDERS OF COMMISSION.

## FOREIGN COMMERCE.

The Commission's territorial jurisdiction carries up to the international boundary line, at which that of Congress itself halts, and as to foreign commerce is thus coextensive with that of the federal government. No act of Congress has force of law beyond that boundary line, but up to it, as everywhere else within the United States, the interstate commerce act has full effect just as the federal control act had effect when these shipments moved. *International Nickel Co. v. Director General, as Agent*, 627 (629).

## FORE RIVER RAILROAD CORPORATION.

History and description of. *Massachusetts Oil Refining Co. v. B. & A. R. R. Co.*, 535 (537-538).

Found to be a common carrier subject to the act. *Id.* (543).

## FRACTIONS.

Rule for disposition of fractions under general order No. 28 of the Director General applied only to rates quoted in dollars or dollars and cents per ton. Such rule did not, and could not by any reasonable interpretation qualify another rule, which was complete in itself and specifically provided for the application of rates stated in cents per ton or other unit. Shipments found overcharged and reparation awarded. *Hercules Mining Co. v. Director General, as Agent*, 140.

FREE TIME. *See* DETENTION; DEMURRAGE.

FURTHER HEARING. *See also* REARGUMENT; SUPPLEMENTAL REPORT.

Upon further hearing, former report 48 I. C. C., 312, reasonable maximum differentials prescribed on shipments of wheat, flour, and articles taking the same rates to and from points in Texas differential territory. Railroad Commission of Louisiana *v.* A. H. T. Ry. Co., 4.

Rates on coal prescribed in original report, 62 I. C. C., 686, for the removal of undue prejudice could not be established without violating the long-and-short-haul rule of the fourth section. Upon further hearing original findings modified to extent of permitting the establishment and maintenance of a specific rate satisfactory to complainant and which would avoid such departure. West Kentucky Coal Bureau *v.* I. C. R. R. Co., 228.

Upon further hearing, rates on mop handles, l. c. l., from Chicago, Ill., to Pacific coast terminals found not unreasonable, but rates on O-Cedar polish in glass, boxed, and in metal cans, boxed, c. l., and on mops, c. l. and l. c. l., found unreasonable and reasonable rates prescribed. Former report, 55 I. C. C., 733. Channel Chemical Co. *v.* A. T. & S. F. Ry. Co., 235.

Upon further hearing, finding in *The Wisconsin Rate Cases*, 44 I. C. C., 602, adhered to, and the class rates from La Crosse, Wis., to New York, N. Y., found unreasonable to extent they exceed the class rates in effect from New York to La Crosse; and the class rates from La Crosse to other points in trunk line territory and New England, found unreasonable to extent that they do not bear the same relation to the rates herein found reasonable for application from La Crosse to New York as heretofore borne. La Crosse Shippers' Asso. *v.* A. A. R. R. Co., 371.

Upon further hearing, rates on coal from Dawson, N. Mex., to Clarkdale and Jerome, Ariz., found unreasonable as compared with rates prescribed in *Arizona Corp. Commission*, 28 I. C. C., 428, from Gallup, N. Mex., to various Arizona points. Finding in original report 57 I. C. C., 300, reversed; reasonable rates prescribed and reparation awarded. United Verde Extension Mining Co. *v.* U. V. & P. Ry. Co., 377.

Findings in original report, 60 I. C. C., 583, that increases in rates on acid from Hillsboro, Ill., to certain Ohio River crossings were justified, modified on further hearing. Increased rates found to be no longer justified as rates from Hillsboro are no longer on the basis generally in effect in this part of c. f. a. territory and the rates from Copperhill, Tenn., to Cincinnati, Ohio, have the effect of eliminating Hillsboro from that market. Acid from Hillsboro to Ohio River Points, 383.

Upon further hearing, certain conditions in the through export bill of lading, heretofore prescribed by the Commission in 64 I. C. C., 347, modified in certain particulars upon recommendations made by the United States Shipping Board. Export Bill of Lading, 387.

#### GATEWAYS.

Proposed increased rates on grain and grain products, c. l. and l. c. l., from Memphis, Tenn., to Carolina territory, when originating in Arkansas, Oklahoma, Texas, and Louisiana, which will equalize the rates from the southwest when moving through Memphis, with those from so-called equalization territory when moving through gateways north of Memphis, found justified. Grain and Grain Products from Memphis, 19.

66-I. C. C.

GENERAL ORDER NO. 28. *See* FEDERAL CONTROL.

GROUP RATES. *See also* BLANKET RATES.

Proposal to eliminate certain stations on the Denver & Rio Grande Western, a narrow gauge line, from the application of group rates applicable between Pacific coast points and points in Colorado and New Mexico, and to definitely restrict such rates to Colorado common points and Santa Fe, N. Mex., which will effect no change in rates but merely clarify the tariffs—a commendable thing, found justified. Nonapplication of Group-J Rates, 96.

Rates on lumber from Weed and Westwood, Calif., and Klamath Falls, Oreg., to points in Minnesota and South Dakota, found unreasonable to extent they exceeded the group-E rates applicable from the respective groups in which points of origin situated. Reparation awarded. Gaynor Lumber Co. v. Director General, as Agent, 109.

The principle of group rates, particularly when applied to areas containing natural resources, has long been sanctioned, but such rates have frequently been condemned when the minimum hauls are so disproportionate to the maximum hauls as to impose unreasonable or otherwise unlawful charges for the shorter distances. Clinton Paving Brick Co. v. Director General, as Agent, 338 (344).

Class and commodity rates to and from Woodbury, N. J., found not unreasonable, unduly prejudicial or unjustly discriminatory as compared with rates to and from Philadelphia, Pa., and points taking the same rates. Belber Trunk & Bag Co. v. W. J. & S. R. R. Co., 490.

All groupings for rate purposes are more or less arbitrary. Group lines generally have the appearance of injustice to some point just across the line. *Id.* (494).

Adjustment, under which cement mills within the Kansas gas belt, including Dewey, Okla., had the benefit of the same rate to points in Kansas, was disturbed by establishment of distance rates from Dewey, while from the other gas belt producing points in Kansas to destinations in the same state, higher group rates were continued in effect. Subsequently previously existing grouping restored. *Held*: Higher rates charged on intra-state shipments moving during federal control, found not unreasonable. Iola Cement Mills Traffic Asso. v. Director General, as Agent, 495.

Third-class rates on wool in the grease were in effect from Boston and East Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J., while lower commodity rates were contemporaneously maintained to specified points in the Philadelphia, Pa., rate group. Subsequently such commodity rates to Philadelphia points were eliminated and both destination groups were placed on a parity. *Held*: Higher class rates charged on shipments moving during interim found not unreasonable or unduly prejudicial. Botany Worsted Mills v. Director General, as Agent, 556.

HIGH RATES. *See* PROHIBITIVE RATES.

IMPORT AND DOMESTIC.

Fifth-class rate charged on imported pickled sheep skins from Pacific coast ports to Atlantic seaboard destinations, found applicable but unreasonable to extent it exceeded lower commodity rate on domestic shipments of sheep slats (green), which lower commodity rate was subsequently established on imported pickled sheep skins. Reparation awarded. Tanners' Council v. Director General, as Agent, 415.

**IMPORT AND DOMESTIC—Continued.**

Domestic rate on import shipments of kapok, moving from San Francisco, Calif., to Chicago, Ill., New York, N. Y., and Boston, Mass., assessed as a result of the cancellation of all import rates by the Director General under general order No. 28, found unreasonable to extent it exceeded import rate subsequently established on feathers and certain kinds of fiber with which kapok is fairly comparable. Reparation awarded. *Dutton Co. v. Director General, as Agent, 663.*

**IMPORT RATES.**

It is not to be assumed that an increase of 25 per cent under general order No. 28 of the Director General in relatively low import rates would operate to make them reasonable maximum rates. *Dutton Co. v. Director General, as Agent, 663.*

**IMPORT TRAFFIC.**

Class rate on imported nitrate of soda from Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, during federal control, found unreasonable to extent it exceeded lower commodity rate subsequently established after request therefor made. *Barrett Co. v. Director General, as Agent, 381.*

Domestic rate applicable on import shipment of nitrate of soda from Tacoma, Wash., to Ramsay, Mont., found not unreasonable or unduly prejudicial as compared with domestic rate contemporaneously in effect from San Francisco, Calif., to Bacchus, Utah. *Du Pont de Nemours & Co. v. Director General, as Agent, 501.*

**INBOUND AND OUTBOUND.**

Applying increases under general order No. 28 of the Director General to each factor of combination rates on smithing coal moving in bulk to St. Louis, Mo., there sacked and forwarded to destinations in western territory, while applying but a single increase to the through rates on such coal when moving through in bulk, found not unreasonable. Combination clauses under that order relate specifically to through continuous movements, while the coal sacked by complainant moved into and out of its yards in distinct and separate movements. *Romann & Bush Pig Iron & Coke Co. v. Director General, as Agent, 147.*

Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point and the publication by the inbound carrier of a tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justified in relying upon the lower basis of rates thus offered. Reparation awarded. *Brenner Lumber Co. v. Director General, as Agent, 595.*

**INCREASED RATES. See ADVANCE IN RATES; DOUBLE INCREASE.****INDIANA LIMESTONE DISTRICT.**

Increased charges initiated by the Director General under general order No. 28 and assessed on stone moving during federal control from points in the Indiana limestone district to various destinations found unreasonable to extent that charges for preliminary services from quarries to mills and similar movements, exceeded charges subsequently established. Reparation awarded. *Bedford Cut Stone Co. v. Director General, as Agent, 28.*

## INTERMEDIATE POINTS.

Demurrage charges on lumber consigned to Norfolk, Va., for "Belt Line delivery," but held short of destination by line-haul carrier for payment of freight charges and disposition orders before turning over to switching line, found unlawful. Cars were not delivered to the Belt Line to whom disposition orders were given and line-haul carrier failed to make inquiry of such Belt Line in respect thereto. Reparation awarded. *Excelsior Shook & Lumber Co. v. S. A. L. Ry. Co.*, 241.

Where no rule is published requiring payment of transportation charges prior to turning shipments over to a delivering line, shippers are not on notice of any such practice or requirement. A shipper does all that is required when he notifies the delivering line shown in the billing of such disposition of the cars as is desired, and to escape responsibility for failure to effect delivery called for, the line-haul carrier must clearly and unequivocally show that the delivering line had knowledge of the arrival of the cars and that they were being held for its account. *Id.* (243-244).

## INTERURBAN ROADS.

Proposed cancellation of joint rates from Indianapolis, Ind., over the Terre Haute, Indianapolis & Eastern Traction Co. and the Dayton & Western Traction Co. to points on the Indiana, Columbus & Eastern Traction Co. east of Dayton, Ohio, and points on connecting lines; and proposed cancellation of joint rates from points on the Interstate Public Service Co. and connecting lines to points on the Indiana, Columbus & Eastern Traction Co. and points beyond; which will result in the application of higher combinations, found not justified. Rate cancellation from Indiana to Ohio, 449.

## INTERVENERS.

Objections of defendants to receipt of petitions in intervention seeking similar relief as set forth in the complaint, on ground that allowances are thereby sought at points and plants not covered by the complaint, as to which defendants had not had requisite notice or opportunity to prepare their defense, found well taken and petitions dismissed. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44 (46).

INTRASTATE RATES. *See* STATE RATES.

## INVESTIGATION.

Upon the resumption of corporate control and operation, the Pennsylvania R. R. Co. awarded to the Baldwin Locomotive Works a contract for the repair of 200 locomotives, while maintaining shops on its own line for such work. Upon investigation, the cost to respondent was over \$3,000,000 in excess of the cost at which the work might have been done in its own shops, and included work paid for twice in some instances. Such work could have been done in respondent's own shops within a reasonable time by an appropriate coordination of efforts and reasonable added exertion. *Construction and Repair of Ry. Equipment: Penn. R. R. Co.*, 694.

Contracts negotiated by the Atlantic Coast Line R. R. Co. in 1920 for the repair of 30 of its locomotives by the Baldwin Locomotive Works, although based upon excessive costs, not found, in the circumstances disclosed, to have been unwarranted. *Construction and Repair of Ry. Equipment: A. C. L. R. R. Co.*, 727.



## INVESTIGATION—Continued.

Under contracts negotiated in 1920 with certain locomotive construction companies, 195 locomotives of the New York Central R. R. were sent to contract shops for classified repairs. Upon investigation the cost to respondent was in the neighborhood of \$3,000,000 in excess of the cost of similar work in its own shops and such respondent could have repaired at least the greater number of the locomotives in its own shops within the time in which the contract work was done. *Construction and Repair of Ry. Equipment: N. Y. C. R. R. Co., 732.*

ISOLATED SHIPMENT. *See* SPORADIC MOVEMENT.

## ISSUE.

Objections of defendants to receipt of petitions in intervention seeking similar relief as set forth in the complaint, on ground that allowances are thereby sought at points and plants not covered by the complaint, as to which defendants had not had requisite notice or opportunity to prepare their defense, found well taken and petitions dismissed. *Omaha Packing Co. v. A., T. & S. F. Ry. Co., 44 (46).*

Defendants contended that allegations of complaint were not sufficiently explicit to put them on notice that complainants would present their case with reference mainly to branch line points. When asked if they desired rehearing or further hearing to answer complainants' case as to such branches, defendants stated they did not. *Held: Complainants were within allegations of complaints in presenting evidence of the rates on these branch lines to show undue prejudice. State of Idaho, ex rel. v. Director General, 330 (332).*

Relief sought has been afforded in another decision heretofore rendered.

*Held: Since there is no issue before the Commission complaint dismissed. Beaumont Chamber of Commerce v. A. & W. Ry. Co., 544.*

JOINT AND SEVERAL LIABILITY. *See* LIABILITY.JOINT RATES. *See also* THROUGH ROUTES AND JOINT RATES.

Cancellation of. can not be justified on the ground that the divisions thereof are unsatisfactory. If satisfactory divisions can not be agreed upon between carriers, that matter may be presented to the Commission in an appropriate proceeding. *Routing Restrictions on Lumber, 56.*

American lines parties to a joint rate from or to a point in Canada, the charges under which are unreasonable, "cause to be done" or "do" a thing (i. e., the collection of unreasonable charges for the transportation of property) "prohibited and declared to be unlawful" by the act, and are "liable to the person or persons injured thereby for the full amount of the damage sustained." *International Nickel Co. v. Director General, as Agent, 627 (628).*

In attempting to justify the reasonableness of a joint rate from points in Canada to points in the United States, the American carriers contended that the division received by them for the haul within the United States was not unreasonable or excessive. *Held: Commission must consider the reasonableness of the joint rate as a whole. Id. (631).*

Where an unreasonable joint rate has been collected the liability of the parties to such action is joint and several, and the nonjoinder as a party defendant of one of the carriers which participated in the transportation is immaterial. *Gulf City Mfg. Co. v. Director General, as Agent, 763 (764).*

## JURISDICTION.

An unfavorable financial condition of carriers does not preclude the Commission from finding particular rates or rates on particular commodities to be unreasonable when the facts are sufficient to justify such a finding. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68 (73).

The Commission's power over divisions is founded upon the public interest. Carriers are mutually dependent parts of the transportation system; the public interest requires that all essential parts be maintained in effective working condition; the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier. *New England Divisions*, 196 (199).

Where carrier was not under federal control, its absorption provisions on intrastate traffic were not subject to the Commission's jurisdiction during the federal control period. *Citizens Coal Mining Co. v. Director General*, as Agent, 271 (273).

The Commission is without jurisdiction to award reparation for excess war taxes paid. *Weaver Bros. Lumber Co. v. Director General*, as Agent, 297 (299).

Contention that, after undue prejudice against interstate commerce has been removed by compliance with the Commission's order, the action of state authorities in approving the rates prescribed deprives the Commission of jurisdiction to require the continuance of the nonprejudicial adjustment, not sustained. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 386 (388).

Contention that the language of the federal control act did not give power to the President or the Director General to assess a penalty, and that Congress could not have given either of them that power because the imposition of a penalty is a legislative function which can not be delegated. *Held*: The Director General was authorized to inaugurate any reasonable and just regulation and practice which he might find necessary to eliminate the abuse of excessive and unreasonable detention of freight cars. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393 (396).

The right of carriers to assess charges for undue detention of equipment existed at common law, and such charges are now published in schedule form in accordance with the provisions of the act. The Commission may require carriers to maintain reasonable demurrage charges which are in part compensation for use of equipment, and in part penalties for detention of cars. *Id.* (396-397).

Contention that under section 15, paragraph (4) of the act the Commission can not require a carrier to continue to participate in through routes and joint rates on ground that it will secure greater revenue out of longer hauls via other routes, not sustained. Contention overlooks fact that the primary question is the justification of increased rates which will result. Furthermore, the showing made would justify the establishment of through routes and joint rates in the first instance. *Rate Cancellation from Indiana to Ohio*, 449 (450-451).

66 I. C. C.

## JURISDICTION—Continued.

Complaint asking the Commission to prescribe reasonable compensation for the use by defendant carriers of complainant's bridge across the Mississippi River between Keokuk, Iowa, and Hamilton, Ill., and to require the movement of defendant's traffic via that bridge, *Held*: Relationship between carriers and the bridge company is a matter of contract over which the Commission has no jurisdiction. *Keokuk & Hamilton Bridge Co. v. W. Ry. Co.*, 545.

That a carrier deducts an amount greater than is paid by it for the use of a bridge before dividing a joint rate with its connections does not of itself confer jurisdiction upon the Commission to prescribe the amount to be paid for that use. That portion of the act which confers upon the Commission jurisdiction to establish just divisions of joint rates refers only to divisions "between the carriers subject to this act." *Id.* (548).

The Commission's territorial jurisdiction carries up to the international boundary line, at which that of Congress itself halts, and as to foreign commerce is thus coextensive with that of the federal government. No act of Congress has force of law beyond that boundary line, but up to it, as everywhere else within the United States, the interstate commerce act has full effect just as the federal control act had effect when these shipments moved. *International Nickel Co. v. Director General*, as Agent, 627 (629).

The liability of carriers for general damages growing out of their failure to furnish cars is determinable by the courts. The law does not require them to define their liability by tariff publication and the Commission has no jurisdiction to require carriers to establish reciprocal demurrage regulations. *Deposit for Live-Poultry Car Ordered*, 653 (656).

Excluding the period of federal control as provided in section 206 (f) of the transportation act, 1920, claim for reparation for causes of action arising prior to federal control, found not barred by the statute of limitations and within the Commission's jurisdiction. *British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co.*, 661.

## KEOKUK &amp; HAMILTON BRIDGE COMPANY.

Found not to be a common carrier subject to the act. It neither holds itself out as ready to engage in transportation for hire as a public employment, nor has it the motive power or cars to perform such transportation. *Keokuk & Hamilton Bridge Co. v. W. Ry. Co.*, 545 (548).

## LEGAL RATE.

Rule for disposition of fractions under general order No. 28 of the Director General, applied only to rates quoted in dollars or dollars and cents per ton. Such rule did not, and could not, by any reasonable interpretation qualify another rule, which was complete in itself and specifically provided for the application of rates stated in cents per ton or other unit. Shipments found overcharged and reparation awarded. *Hercules Mining Co. v. Director General*, as Agent, 140.

Contention that lower rate remained in effect because new tariff carried a note that "This tariff contains no changes in rates from those published effective June 25, 1918," and because item naming the increased rate did not bear a symbol indicating an increase over the previous rate as required by Tariff Circular 18-A, not sustained. Tariff publishing the increased rate and cancelling the previous tariff conformed to the essential requirements of the act and was lawfully on file with the Commission. *Id.* (141).

## LEGAL RATE—Continued.

Rates named in a tariff published after the issuance of general order No. 28 of the Director General, but not to become effective until after the effective date of that order, found to be subject to the increase of 25 per cent provided thereunder. *Growers Rice Milling Co. v. Director General, as Agent, 165.*

On kerosene moving from Independence, Kans., to Sheffield, Iowa, re-consigned to Minneapolis, Minn., combination rates to and from reconsignment point assessed. Applicable tariff named a joint rate from origin to destination plus a reconsignment charge. *Held: Combination assessed illegal and shipments overcharged. Refund directed. Standard Asphalt & Refining Co. v. Director General, as Agent, 813.*

Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point and the publication by the inbound carrier of a tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justified in relying upon the lower basis of rates thus offered. Reparation awarded. *Brenner Lumber Co. v. Director General, as Agent, 595.*

Higher rate published in the same tariff from intermediate than from farther distant point. Rate from farther distant point published subject to Rule 77 of Tariff Circular 18-A. *Held: Higher rate from intermediate point legally applicable but publication of lower rate from farther distant point subject to rule 77 was in violation of the fourth section of the act and tantamount to an admission that the higher rate from the intermediate point was unreasonable. Reparation awarded. Standard Asphalt & Refining Co. v. Director General, as Agent, 611.*

## LIABILITY.

The charging of an unreasonable rate is a tort, and the parties to such a rate are jointly and severally liable for any resulting damage. *International Nickel Co. v. Director General, as Agent, 627 (628).*

American lines parties to a joint rate from or to a point in Canada, the charges under which are unreasonable, "cause to be done" or "do" a thing (i. e., the collection of unreasonable charges for the transportation of property) "prohibited and declared to be unlawful" by the act, and are "liable to the person or persons injured thereby for the full amount of the damage sustained." *Id. (628).*

Where an unreasonable joint rate has been collected the liability of the parties to such action is joint and several, and the nonjoinder as a party defendant of one of the carriers which participated in the transportation is immaterial. *Gulf City Mfg. Co. v. Director General, as Agent, 763 (764).*

## LIMITATION OF ACTION.

After complaint was filed, powers of attorney were executed by certain consignors, who were not named as parties in the complaint, in favor of a complainant who was so named. *Held: Introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint, and since such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied. Tanners' Council v. Director General, as Agent, 415 (419).*

## LIMITATION OF ACTION—Continued.

Period of 15 days, or as subsequently increased to 30 days, within which claims may be presented for the cancellation or refunding of demurrage charges assessed or collected on account of bunching of cars for unloading or reconsigning, found not unreasonable as compared with period of six months for filing of loss and damage claims. Preparation of claims for loss and damage involves the collection of considerably more data than under the bunching rule and the present provision is national in scope and apparently satisfactory to practically all shippers. *Carnation Milk Products Co. v. Director General*, as Agent, 553.

Excluding the period of federal control as provided in section 206 (f) of the transportation act, 1920, claim for reparation for causes of action arising prior to federal control, found not barred by the statute of limitations and within the Commission's jurisdiction. *British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co.*, 661.

## LINE HAUL.

Shipments were handled under regular billing, in trains subject to orders of train dispatchers. Movements performed necessitated the crossing of one or more river bridges and considerable switching and back hauling. Point involved is not shown in governing tariffs as a point within the switching limits and rate from and to that point is published as a transportation charge. *Held*: Service found to be a line haul and not a switching movement. *Hilb & Bauer v. Director General*, as Agent, 279 (280). Rate and route specified in bill of lading but no junction point. Originating and delivering carriers both reached origin and destination points. Lower rate applied when entire haul performed by delivering carrier. Contention that originating line should have turned shipment over to delivering carrier at point of origin, not sustained and shipments not misrouted as routing instructions plainly indicated a line haul by the originating carrier. *Standard Asphalt & Refining Co. v. Director General*, as Agent, 295.

On shipments moving prior to federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of a rival line to which shipper might have delivered the shipment had he so elected. *Held*: Following *McLean Lumber Co.*, 22 I. C. C., 349, receiving carrier may forward shipment over its line at the rate lawfully applicable, it not being obligated to turn the traffic over to its competitor. Former report, 61 I. C. C., 659, modified and shipments found not misrouted. *Mulkey Salt Co. v. Director General*, as Agent, 441.

## LOADING AND UNLOADING.

Refusal of carriers to unload ordinary live stock from their cars into stock pens adjacent to packing plants of complainants, or to make an allowance for unloading such shipments, while pursuant to section 15, paragraph (5) of the act, performing the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge in addition to line-haul charges, not shown to violate the act. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44.

## LOADING AND UNLOADING—Continued.

Charges in addition to the line-haul charges, for unloading and reloading en route ordinary live stock destined to private stockyards adjacent to packing plants of complainants, while unloading and reloading such shipments destined to public stockyards, without charge in addition to line-haul charges, found to result in undue prejudice to complainant in favor of competitors whose packing plants are adjacent to public stockyards. *Id.* (44).

Section 15, paragraph (5) is definitely limited, both as to initial loading and as to final unloading, to public stockyards. It does not apply to initial loading at other than public stockyards even for shipment to such yards. *Id.* (49).

The Commission must assume that Congress legislated on the subject of the duties of common carriers by railroad concerning the receipt and delivery of live stock with full knowledge of the law as declared by the Supreme Court in *Covington Stock-Yards Co. v. Keith*, 139 U. S., 128, and therefore with the knowledge and purpose that public stockyards would be open to all shippers and consignees as the terminals of the carriers. *Id.* (51).

If a shipper habitually delays cars for unloading at destination the carriers may place an embargo against freight consigned to him and thus prevent further detention of equipment; if the shipper habitually delays loading cars the carrier may refuse further supply and thus prevent detention and accumulation of cars at the loading point. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393 (405).

Proposed schedules which would require shippers to deposit \$10 for each live-poultry car ordered, such deposit to be refunded only if loading of the car be commenced within 48 hours following its placement, found not justified in part and ordered cancelled without prejudice to the filing of new schedules modified in accordance with suggestions in the report. *Deposit for Live-Poultry Car Ordered*, 653.

Approximately 8 per cent of live-poultry cars were not loaded at point at which originally placed. Contention that only those at fault should be penalized and those not responsible for the abuse should not be inconvenienced by a proposed rule which would require a deposit for each car ordered, refund to be made only if loading be commenced within 48 hours after placement, *Held*: Percentage sufficiently high to justify some action on the part of respondents to correct the evil. *Id.* (654-655).

LOCAL RATES. *See also* COMBINATION RATES.

Proportional rates may properly be somewhat lower than the corresponding local rates. *Swift & Co. v. Director General*, as Agent, 409 (413).

Following *Arkansas Jobbers & Mfrs. Asso.*, 59 I. C. C., 662, local rates on grain and grain products from St. Louis, Mo., and from Cairo and Thebes, Ill., to certain points in Arkansas found unduly prejudicial to such Arkansas points and unduly preferential of Little Rock, Pine Bluff, and Fort Smith, Ark. Reasonable and nonprejudicial rates prescribed. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 475.

LOCATION. *See also* ADVANTAGES AND DISADVANTAGES.

There is merit in the contention that because of the relatively long haul of hardwood lumber from southern points to consuming points in central and eastern trunk line territories, the percentage increase authorized under *Increased Rates, 1920*, 58 I. C. C., 220, has had a peculiarly disturbing effect upon the lumber business. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68 (74).

## LOCOMOTIVES.

Upon the resumption of corporate control and operation, the Pennsylvania R. R. Co. awarded to the Baldwin Locomotive Works a contract for the repair of 200 locomotives, while maintaining shops on its own line for such work. Upon investigation, the cost to respondent was over \$3,000,000 in excess of the cost at which the work might have been done in its own shops, and included work paid for twice in some instances. Such work could have been done in respondent's own shops within a reasonable time by an appropriate coordination of efforts and reasonable added exertion. *Construction and Repair of Ry. Equipment: Penn. R. R. Co., 694.*

Contracts negotiated by the Atlantic Coast Line R. R. Co. in 1920 for the repair of 30 of its locomotives by the Baldwin Locomotive Works, although based upon excessive costs, not found in the circumstances disclosed to have been unwarranted. *Construction and Repair of Ry. Equipment: A. C. L. R. R. Co., 727.*

Under contracts negotiated in 1920 with certain locomotive construction companies, 195 locomotives of the New York Central R. R. were sent to contract shops for classified repairs. Upon investigation, the cost to respondent was in the neighborhood of \$3,000,000 in excess of the cost of similar work in its own shops, and such respondent could have repaired at least the greater number of the locomotives in its own shops within the time in which the contract work was done. *Construction and Repair of Ry. Equipment: N. Y. C. R. R. Co., 732.*

Service mileages alone, upon which shop credits are based, take no account of tonnages handled and the consequent variations in load or strain which obviously go far to determine the periods of service and vitally affect the life of the locomotive. In the same way, assigned mileages and service and shop-mileage ratios, without reference to tractive power, afford no guide to capacity to handle tonnage. In brief, into the determination of motive power conditions, as of any given time or relatively as between different periods, other factors than mileages necessarily enter. *Id. (747).*

LONG AND SHORT HAUL. *See also* TARIFF CIRCULAR 18-A.

## In General:

The Commission has required the cancellation of suspended schedules because of threatened violations of the long-and-short-haul provision of the fourth section of the act. *Salt from Louisiana Mines to Chicago, 81 (91).*

Rates on coal prescribed in original report, 62 I. C. C., 686, for the removal of undue prejudice could not be established without violating the long-and-short-haul rule of the fourth section. Upon further hearing, original findings modified to extent of permitting the establishment and maintenance of a specific rate satisfactory to complainant and which would avoid such departure. *West Kentucky Coal Bureau v. I. C. R. R. Co., 228.*

*Alvord, Iowa, and Jasper, Minn.: Authority to charge rates on lumber from points in California and Oregon to Sioux City, Iowa, St. Paul and Duluth, Minn., which are lower than on like traffic to Alvord and Jasper and other intermediate points, denied. Gaynor Lumber Co. v. Director General, as Agent, 109 (112).*

## LONG AND SHORT HAUL—Continued.

Oklahoma City, Okla.: Authority to continue to charge rates on fuller's earth from Midway, Quincy, and Ellenton, Fla., to Amarillo, Tex., which are lower than on like traffic to Oklahoma City and other intermediate points, denied. Choate Oil Corp. v. Director General, as Agent, 562 (565).

## LONG ARTICLES.

Minimum weight of 40,000 pounds for each car used, applicable on fir piling, in triple carloads, found unreasonable to extent it exceeded minimum of 33,000 pounds subsequently established, and subject to a minimum charge of \$15 per car. Reparation awarded. Ambrose v. Director General, as Agent, 153.

## LOSS AND DAMAGE.

Period of 15 days, or as subsequently increased to 30 days, within which claims may be presented for the cancellation or refunding of demurrage charges assessed or collected on account of bunching of cars for unloading or reconsigning, found not unreasonable as compared with period of six months for filing of loss and damage claims. Preparation of claims for loss and damage involves the collection of considerably more data than under the bunching rule and the present provision is national in scope and apparently satisfactory to practically all shippers. Carnation Milk Products Co. v. Director General, as Agent, 553.

The liability of carriers for general damages growing out of their failure to furnish cars is determinable by the courts. The law does not require them to define their liability by tariff publication and the Commission has no jurisdiction to require carriers to establish reciprocal demurrage regulations. Deposit for Live-Poultry Car Ordered, 653 (656).

## LOW RATES.

It is not to be assumed that an increase of 25 per cent under general order No. 28 of the Director General in relatively low import rates would operate to make them reasonable maximum rates. Dutton Co. v. Director General, as Agent, 663.

## MANUFACTURED ARTICLES.

Rate on pig iron from Pottstown, Pa., to San Francisco, Calif., for export, found not unreasonable or unduly prejudicial because the spread in the rates on that article and manufactured iron and steel articles exceeded 5 cents, the basis subsequently established. Shibakawa & Co. (Inc.) v. P. & R. Ry. Co., 261.

Rates on wool in the grease found not unreasonable as compared with rates on cotton piece goods. Latter named commodity has somewhat similar transportation characteristics, but being manufactured products are not subject to the loss from waste which attends wool in the grease. Botany Worsted Mills v. Director General, as Agent, 556 (558).

## MAP.

Illustrating rates per net ton on salt, c. l., from mines in Louisiana, Detroit, Mich., and New York (Halite), to various points, with distances. Salt from Louisiana Mines to Chicago, 81 (Map facing page 82).

MARKET COMPETITION. *See* COMPETITION.

## MEASURE OF RATE.

Commercial advantages and disadvantages arising from variations in costs of production are not factors that can have any great consideration by the Commission in reaching conclusions as to the propriety of rate structures. Standard Oil Co. v. Director General, as Agent, 37 (40).



## MEASURE OF RATE—Continued.

- An unfavorable financial condition of carriers does not preclude the Commission from finding particular rates or rates on particular commodities to be unreasonable when the facts are sufficient to justify such a finding. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68 (73).
- A proper rate relationship between competitive groups is in many respects of greater importance to the shipping public than the measure of the rate itself. *Salt from Louisiana Mines to Chicago*, 81 (93).
- A charge, reasonable in its inception many years ago, may become unreasonably low in consequence of the construction of more adequate facilities, a change in the character of the service rendered, the increased level of operating costs generally, or one or more of these factors. But the existence of such general conditions alone affords no proper basis upon which to test the reasonableness of a specific material increase in charges. *Space Rental Charges on Cotton*, 121 (125).
- Rates may not be condemned upon a mere showing that carriers failed to comply with instructions issued by the Director General. *Tuffi Bros. Pig Iron & Coke Co. v. Director General, as Agent*, 129 (130).
- Whether rates made effective under general order No. 28 of the Director General were unreasonable or otherwise unlawful must be determined upon considerations apart from the construction of that order. *Oxford Paper Co. v. Director General, as Agent*, 159 (163).
- Whether the resulting rate was unreasonable or otherwise unlawful is the controlling fact to be determined in passing upon increases promulgated under general order No. 28 of the Director General, and not whether a rate was increased in strict compliance with the terms or the intention of that order. *Citizens Coal Mining Co. v. Director General, as Agent*, 271 (272).
- While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. The maintenance of a rate that is too high may be one of the causes of which a light movement is the effect. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.*, 377 (379).
- A charge is not necessarily unlawful because it is made up of two separately published charges. The real question is as to the propriety of the aggregate charge. *American Wholesale Lumber Asso. v. Director General, as Agent*, 393 (397).
- Minnesota intrastate rates on anthracite coal not shown to have been an appropriate measure of the rates on coke from St. Paul, Minn., to Minnesota points during the period of federal control. The loading is materially less on coke than on anthracite coal and the car earnings are less, even when the rate per ton is materially higher. *Minnesota By-Product Coke Co. v. Director General, as Agent*, 480 (488-489).
- In cases arising out of federal control neither the percentage nor the amount by which a rate was increased under general order No. 28, or other freight rate authorities of the Director General, constitutes proof of unreasonableness. Any general increase necessarily disturbs pre-existing rates, either by varying amounts, if it be a percentage increase, or by varying percentages, if it be a flat increase. *Wofford Oil Co. v. Director General, as Agent*, 509 (510).

**MEASURE OF RATE—Continued.**

The mere fact that some other shipper may have obtained a reduction in his rate prior to the date complainants obtained a reduction in their rates does not indicate that complainants paid unreasonable rates or were unduly prejudiced or in any way damaged within the meaning of the law. *Id.* (510).

The fact that rates were not established in strict conformity with the provisions of general order No. 28 of the Director General is insufficient in itself to support a finding of unreasonableness. *Central Illinois Light Co. v. Director General*, as Agent, 623 (626).

Complainant based allegation of unlawfulness upon contention that defendant assured it that rate would be established to point where complainant moved its plant which was lower than the rate to point where such plant was formerly located. *Held*: Such an agreement affords no basis for condemning the rate assailed. *General Porcelain Co. v. Director General*, as Agent, 681.

**MILEAGE RATES.** *See* DISTANCE RATES.

**MILLING IN TRANSIT.** *See* TRANSIT ARRANGEMENTS.

**MINIMUM CHARGE.**

Minimum weight of 40,000 pounds for each car used, applicable on fir piling, in triple carloads, from Kulshan to Bellingham, Wash., during federal control, found unreasonable to extent it exceeded minimum of 33,000 pounds subsequently established, and subject to a minimum charge of \$15 per car. Reparation awarded. *Ambrose v. Director General*, as Agent, 153.

Charges applicable on scrap iron between points within the switching limits of Cincinnati, Ohio, and Andrews, Ky., composed of a switching charge, and a line-haul charge with minimum and maximum of \$15 per car, found unreasonable to extent that charges for the line-haul movement exceed a minimum of \$6.50 and maximum of \$10 per car, subsequently established. Reparation awarded. *Hilb & Bauer v. Director General*, as Agent, 279.

**MINIMUM CLASS SCALE.**

Rates charged on intrastate shipments of box board moving during federal control found legally applicable and not unreasonable as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Ft. Wayne Corrugated Paper Co. v. Director General*, as Agent, 669.

**MINIMUM WEIGHT.**

Piling, fir: Minimum weight of 40,000 pounds for each car used, when moving in triple carloads, found unreasonable to extent it exceeded minimum of 33,000 pounds subsequently established, and subject to a minimum charge of \$15 per car. Reparation awarded. *Ambrose v. Director General*, as Agent, 153.

Salt: Proposed rate on, minimum 80,000 pounds, from mines in Louisiana to Chicago, Ill., St. Louis, Mo., and intermediate main-line points on the Illinois Central and Yazoo & Mississippi Valley, which would result in violations of the long-and-short-haul provision of the fourth section of the act and in undue prejudice to Indianapolis, Ind., found unlawful. Salt from Louisiana Mines to Chicago, 81.

**MISROUTING.**

Rate and route specified in bill of lading but no junction point. Originating and delivering carriers both reached origin and destination points. Lower rate applied when entire haul performed by delivering carrier. Contention that originating line should have turned shipment over to delivering carrier at point of origin not sustained and shipments not misrouted as routing instructions plainly indicated a line haul by the originating carrier. *Standard Asphalt & Refining Co. v. Director General, as Agent*, 295.

Carrier's agent billed shipments to wrong destination and teamster, employed by complainant to load cars only, accepted and signed the bills of lading. *Held*: As authority not delegated to teamster to direct the movement of the cars, the acceptance and signing of the bills of lading by him did not bind complainant. Shipments found misrouted and reparation awarded. *Phoenix Refining Co. v. A., T. & S. F. Ry. Co.*, 303.

On shipments moving prior to federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of a rival line to which shipper might have delivered the shipment had he so elected. *Held*: Following *McLean Lumber Co.*, 22 I. C. C., 349, receiving carrier may forward shipment over its line at the rate lawfully applicable, it not being obligated to turn the traffic over to its competitor. Former report, 61 I. C. C., 659, modified and shipments found not misrouted. *Mulkey Salt Co. v. Director General, as Agent*, 441.

On shipments moving during federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of another line to which shipper might have delivered the shipment had he so elected. *Held*: Shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under a unified and coordinated national control and not in competition." *Id.* (441).

Misrouting found to result where shipments were delivered to originating carrier unrouted and shipper was not given the benefit of the cheapest available and reasonable route to which he was entitled. *Carney v. Director General, as Agent*, 560.

Where for all practical purposes the routing instructions given by shipper are complete, and shipments move in accordance therewith, no misrouting results. *National Supply Co. v. C., B. & Q. R. R. Co.*, 604 (605).

**MISTAKE.** See **ERROR**.

**MIXED CARLOADS.**

Rates on green salted hides and green salted sheep pelts, in mixed carloads, from Denver, Colo., to St. Joseph, Mo., and Chicago, Ill., found unreasonable to extent they exceeded rates on green salted hides in straight carloads. Reasonable maximum rates prescribed and reparation awarded. *Swift & Co. v. C., B. & Q. R. R. Co.*, 33.

Although printing increases the value by about 10 per cent, printed and unprinted bags are frequently shipped together, and in such instances any higher rate on printed bags would apply to the entire shipment. *Held*: Higher rates on printed than on unprinted bags found not justified. *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 571 (573).

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**MODIFICATION.**

Upon petition for modification of the Commission's report, 64 I. C. C., 357, service of which was made in compliance with rule XV of the Rules of Practice and to which no objections have been raised, rules and regulations prescribing forms of uniform domestic bill of lading and uniform live-stock contract so as to eliminate doubt as to the liability of the consignee for charges and remove any opportunity for confusion, approved. Domestic Bill of Lading and Live Stock Contract, 63.

**MULTIPLE CAR SHIPMENTS.**

Minimum weight of 40,000 pounds for each car used, applicable on fir piling, in triple carloads, found unreasonable to extent it exceeded minimum of 33,000 pounds subsequently established, and subject to a minimum charge of \$15 per car. Reparation awarded. *Ambrose v. Director General*, as Agent, 153.

**NARROW-GAUGE LINE.**

Proposal to eliminate certain stations on the Denver & Rio Grande Western, a narrow-gauge line, from the application of group rates applicable between Pacific coast points and points in Colorado and New Mexico, and to definitely restrict such rates to Colorado common points and Santa Fe, N. Mex., which will effect no change in rates but merely clarify the tariffs—a commendable thing—found justified. Nonapplication of Group-J Rates, 96.

**NEGLIGENCE.**

Can not be imputed to carrier's agent for failure to divert a shipment before arrival at originally billed destination where only information shown in reconsignment order was car number and initial, and that car was in transit to shipper at original destination. Shipper failed to give point of origin, route of movement, commodity, or any other information, and made no request to protect the through rate. Facts sufficient to justify agent in holding the order until arrival of the car and executing the instructions of the shipper at that time. *Reeves Coal & Dock Co. v. Director General*, as Agent, 469.

Is the violation of an obligation to use care and due diligence. *Id.* (470).

**NEW LINE.** See **EXTENSION OF LINE.****NEW YORK-CHICAGO RATES.** See **CHICAGO-NEW YORK RATES.****NOTICE.**

Where no rule is published requiring payment of transportation charges prior to turning shipments over to a delivering line, shippers are not on notice of any such practice or requirement. A shipper does all that is required when he notifies the delivering line shown in the billing of such disposition of the cars as is desired, and to escape responsibility for failure to effect delivery called for the line-haul carrier must clearly and unequivocally show that the delivering line had knowledge of the arrival of the cars and that they were being held for its account. *Excelsior Shook & Lumber Co. v. S. A. L. Ry. Co.*, 241 (243-244).

**OPERATING COSTS.** See **COST OF OPERATION.****OPPOSITE DIRECTION.** See **BOTH DIRECTIONS.**

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## ORDER NOTIFY.

Request received too late to accomplish diversion, and shipment arrived at originally billed destination, where it was placed upon public delivery tracks. Refused by order notify consignee and subsequently reconsigned. *Held*: Fact that this was an order notify shipment did not preclude carrier from placing car for unloading prior to surrender of bill of lading in absence of instructions to the contrary, and as tariff provided that if a car was placed at original destination and reforwarded without being unloaded it would be subject to rates to and from reconsignment point, combination charged found not unreasonable or unlawful. *Sullivan Lumber Co. v. Director General, as Agent, 119.*

## ORDERS OF COMMISSION.

Upon supplemental report, orders entered in 58 I. C. C., 610 and 63 I. C. C., 288, prescribing reasonable rates between Natchez and Vicksburg, Miss., and points in western Louisiana for the removal of undue prejudice and undue preference in favor of western Louisiana points, vacated. The unlawful situation which resulted in the issuance of those orders does not now exist and will not be restored, and there is no real necessity for their further continuance. *Natchez Chamber of Commerce v. L. & A. Ry. Co., 386.*

Rates on cement from points in the Kansas gas belt and from Dewey, Okla., to points in Nebraska, South Dakota, Wyoming, Iowa, and Missouri found unreasonable. Carriers failed to comply with the original order in the *Cement Investigation*, 48 I. C. C., 201, and as a result of the supplemental proceeding in 52 I. C. C., 225, they were revised, such revision involving a reduction in the rates. Reparation awarded. *Iola Cement Mills Traffic Asso. v. Director General, as Agent, 495.*

## ORE CARRYING CORPORATION.

A water line operating under a common arrangement with a rail carrier for the continuous carriage of through interstate traffic, found to be a common carrier subject to the act, which may lawfully receive from its trunk-line connections reasonable divisions of joint interstate rates, under appropriate tariffs. *Ore Carrying Corporation v. C. R. R. Co. of N. J., 311.*

OUTBOUND RATES. *See* INBOUND AND OUTBOUND.

## OVERCHARGES.

Rule for disposition of fractions under general order No. 28 of the Director General, applied only to rates quoted in dollars or dollars and cents per ton. Such rule did not, and could not, by any reasonable interpretation qualify another rule, which was complete in itself and specifically provided for the application of rates stated in cents per ton or other unit. Shipments found overcharged and reparation awarded. *Hercules Mining Co. v. Director General, as Agent, 140.*

On kerosene moving from Independence, Kans., to Sheffield, Iowa, reconsigned to Minneapolis, Minn., combination rates to and from reconsignment point assessed. Applicable tariff named a joint rate from origin to destination plus a reconsignment charge. *Held*: Combination assessed illegal and shipments overcharged. Refund directed. *Standard Asphalt & Refining Co. v. Director General, as Agent, 313.*

## OVERCHARGES—Continued.

Applicable tariff provided for the application to intermediate points of rates from or to the next more distant station when rates are not specifically published, subject to the general proviso, "Except as may be otherwise specifically provided in the tariff." *Held*: The publication of a "rate basis" to the intermediate points without corresponding "rates" on specific commodities did not operate to make inapplicable the intermediate clause. Shipments found overcharged and refund directed. *Standard Oil Co. v. Director General*, as Agent, 472.

OVERHEAD COSTS. *See* COST OF SERVICE.

PACKING. *See* CONTAINERS.

## PAPER RATES.

The maintenance of rates at a high level is obviously of no direct advantage to the carriers where the traffic fails to move. *Utah State Automobile Asso. v. A., T. & S. F. Ry. Co.*, 8 (17).

## PARITY OF RATES.

Third-class rates on wool in the grease were in effect from Boston and East Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J., while lower commodity rates were contemporaneously maintained to specified points in the Philadelphia, Pa., rate group. Subsequently such commodity rates to Philadelphia points were eliminated and both destination groups were placed on a parity. *Held*: Higher class rates charged on shipments moving during interim found not unreasonable or unduly prejudicial. *Botany Worsted Mills v. Director General*, as Agent, 556.

## PARTIES.

After complaint was filed, powers of attorney were executed by certain consignors, who were not named as parties in the complaint, in favor of a complainant who was so named. *Held*: Introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint, and since such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied. *Tanners' Council v. Director General*, as Agent, 415 (419).

Where shipments were sold at a delivered price and complainant's customers paid the freight charges and deducted them from the invoice price in making settlement, complainants are entitled to any reparation that may be awarded. *Darnell-Taenzer Case*, 245 U. S., 531. *Iola Cement Mills Traffic Asso. v. Director General*, as Agent, 495 (500).

Complaint filed by a public traffic manager naming himself as complainant. *Held*: Since he is not the real party in interest reparation denied. *Carney v. Director General*, as Agent, 560 (561).

Complainant, a commission company, sought reparation as agent for individual shippers named in the complaint. Whereabouts of some complainants unknown, one is deceased and his claim is not listed as an asset of his estate and his administrator declines to take cognizance of it, and the remainder have filed requests for dismissal. *Held*: Complainants' agency to make claim for reparation not sufficiently established. *Hyre-Price Live Stock Commission Co. v. M., K. & T. Ry. Co.*, 591.

The fact that one company may be a subsidiary of another does not *ipso facto* entitle the latter to bring an action in its own name for a damage suffered by the former. *American Agricultural Chemical Co. v. Director General*, as Agent, 650 (651).

## PARTIES—Continued.

American lines parties to a joint rate from or to a point in Canada, the charges under which are unreasonable, "cause to be done" or "do" a thing (i. e., the collection of unreasonable charges for the transportation of property) "prohibited and declared to be unlawful" by the act, and are "liable to the person or persons injured thereby for the full amount of the damage sustained." *International Nickel Co. v. Director General*, as Agent, 627 (628).

Reparation denied for the exaction of an unreasonable rate where complainant was not a party to the transportation records. In cases where complainants are parties it must appear that they suffered the damages claimed before the Commission is justified in entering an order of reparation in their favor. *Id.* (652).

Shipments which move from a point of origin to final destination with an arrangement for storage in transit are regarded as moving under a single continuous contract of carriage. Neither the switching line at the transit point nor the outbound carriers are necessary parties defendant and an award of reparation may be made against the inbound carrier who collected the illegal charges for the switching line. *Capital Warehouse Co. v. Director General*, as Agent, 683 (685-686).

Where an unreasonable joint rate has been collected the liability of the parties to such action is joint and several, and the nonjoinder as a party defendant of one of the carriers which participated in the transportation is immaterial. *Gulf City Mfg. Co. v. Director General*, as Agent, 763 (764).

## PAST RATES.

A charge, reasonable in its inception many years ago, may become unreasonably low in consequence of the construction of more adequate facilities, a change in the character of the service rendered, the increased level of operating costs generally, or one or more of these factors. But the existence of such general conditions alone affords no proper basis upon which to test the reasonableness of a specific material increase in charges. *Space Rental Charges on Cotton*, 121 (125).

Rates on pulled wool in the grease, in machine-pressed bales, from Chicago, Ill., to points in trunk-line territory and New England, which rates have been maintained for many years and resulted from the Commission's suggestion in *Traugott Schmidt & Sons*, 23 I. C. C., 684, found not unreasonable in the past but unreasonable for the future. Reasonable rates prescribed and reparation denied. *Swift & Co. v. Director General*, as Agent, 409.

## PENALTY.

Penalty charge of \$10 per car per day on lumber held for reconsignment beyond 48 hours after 7 a. m. of day following notice of arrival found not to have been unreasonable or otherwise unlawful in the past. However, under present conditions with a great number of idle freight cars, and an entire absence of congestion throughout the country, the charge is, and while present conditions continue will be, unreasonable. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393.

**PENALTY—Continued.**

Contention that the language of the federal control act did not give power to the President or the Director General to assess a penalty; and that Congress could not have given either of them that power because the imposition of a penalty is a legislative function which can not be delegated, *Held*: The Director General was authorized to inaugurate any reasonable and just regulation and practice which he might find necessary to eliminate the abuse of excessive and unreasonable detention of freight cars. *Id.* (396).

The right of carriers to assess charges for undue detention of equipment existed at common law, and such charges are now published in schedule form in accordance with the provisions of the act. The Commission may require carriers to maintain reasonable demurrage charges, which are in part compensation for use of equipment and in part penalties for detention of cars. *Id.* (396-397).

A charge in the nature of a penalty is not unlawful if its purpose is to secure for the public a more efficient use of equipment, and while it should not be so high as to work an undue hardship, it should be sufficient in amount to accomplish the purpose for which it is intended. *Id.* (397).

A charge is not necessarily unlawful because it is made up of two separately published charges. The real question is as to the propriety of the aggregate charge. *Id.* (397).

Contention that carriers having established through rates and provided for reconsignment, it was unlawful to assess penalty charges upon shipments held on account of embargoes, notwithstanding tariff provisions to the effect that reconsignment orders would not be accepted to a point against which an embargo was in force at the time the shipment was forwarded from point of origin, not sustained. *Id.* (398).

Proposed schedules which would require shippers to deposit \$10 for each live-poultry car ordered, such deposit to be refunded only if loading of the car be commenced within 48 hours following its placement, found not justified in part and ordered cancelled without prejudice to the filing of new schedules modified in accordance with suggestions in the report. *Deposit for Live-Poultry Car Ordered*, 653.

Approximately 8 per cent of live-poultry cars were not loaded at point at which originally placed. Contention that only those at fault should be penalized and those not responsible for the abuse should not be inconvenienced by a proposed rule which would require a deposit for each car ordered, refund to be made only if loading be commenced within 48 hours after placement. *Held*: Percentage sufficiently high to justify some action on the part of respondents to correct the evil. *Id.* (654-655).

**PER CAR CHARGES. See also MINIMUM CHARGE.**

Rates on fresh meat moving from freezer at Jersey City, N. J., to complainant's plant at the same point found unreasonable as compared with switching charges at the same and other points, but in view of the complex movement involved, rates charged were unreasonable to extent they exceeded \$15 per car. Reparation awarded. *Armour & Co. v. D., L. & W. R. R. Co.*, 445.



**PERCENTAGE RATES.**

Fifth-class rate charged on blister copper from Port Colborne, Ontario, Canada, to Constable Hook and Chrome, N. J., found unreasonable to extent it exceeded 78 per cent of the commodity rate on copper from Chicago to New York rate points subsequently established. Reparation awarded. *International Nickel Co. v. Director General, as Agent*, 627.

Exceptions to the classification publishing rates as percentages of certain class rates does not in and of itself provide a specific rate, but requires reference to the tariff naming class rates. Such rates can in no sense be considered specific commodity rates. *Ft. Wayne Corrugated Paper Co. v. Director General, as Agent*, 669 (670).

**PERISHABLE FREIGHT.**

Charges on cabbage, in crates, based on estimated weights found not unreasonable because in excess of those based on actual weights. This commodity moves with other perishable freight and due to varying quantities of ice in bunkers it is impracticable to accurately weigh contents of cars on track scales. To stop shipments en route for weighing would result in delay and disarrange the movement. Under such conditions a system of estimated weights is not merely a convenience but a practical necessity. *Providence Fruit & Produce Exchange v. Director General, as Agent*, 300.

**PHYSICAL CONNECTION,**

The mere fact that one common-carrier railroad has a physical connection with another is not of itself sufficient ground upon which to base an order requiring the establishment of joint rates over those roads. The question of whether or not they should be established is one calling for the exercise of the Commission's judgment upon the circumstances and conditions of each particular case as the act provides that the Commission may and shall establish joint rates "whenever deemed by it to be necessary or desirable in the public interest." *Beaver Sand Co. v. Director General, as Agent*, 285 (288-289).

**PLACEMENT.** *See* DELIVERY; SPOTTING CARS.

**PLEADING AND PRACTICE.**

Objections of defendants to receipt of petitions in intervention seeking similar relief as set forth in the complaint, on ground that allowances are thereby sought at points and plants not covered by the complaint, as to which defendants had not had requisite notice or opportunity to prepare their defense, found well taken and petitions dismissed. *Omaha Packing Co v. A., T. & S. F. Ry. Co.*, 44 (46).

**POSTING TARIFFS.** *See* FILING AND POSTING.

**POULTRY CARS.**

Proposed schedules which would require shippers to deposit \$10 for each live-poultry car ordered, such deposit to be refunded only if loading be commenced within 48 hours following its placement, found not justified in part and ordered cancelled without prejudice to the filing of new schedules modified in accordance with suggestions in the report. *Deposit for Live-Poultry Car Ordered*, 653.

Approximately 8 per cent of live-poultry cars were not loaded at point at which originally placed. Contention that only those at fault should be penalized and those not responsible for the abuse should not be inconvenienced by a proposed rule which would require a deposit for each car ordered, refund to be made only if loading be commenced within 48 hours after placement, *Held*: Percentage sufficiently high to justify some action on the part of respondents to correct the evil. *Id.* (654-655).

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## POWER OF ATTORNEY.

After complaint was filed, powers of attorney were executed by certain consignors, who were not named as parties in the complaint, in favor of a complainant who was so named. *Held*: Introduction of such powers of attorney in evidence at the hearing over objection of defendants can not be treated as equivalent to amendment of the complaint, and since such consignors, who bore the freight charges, have filed no complaint within the statutory period, reparation as to them must be denied. *Tanners' Council v. Director General*, as Agent, 415 (419).

POWER OF COMMISSION. *See* JURISDICTION.

PREFERENCES AND PREJUDICES. *See also* DISCRIMINATION.

## Branch Line Points:

Maintenance of blanket rates from and to Nampa, Emmett, and Boise, Idaho, lower than the rates on like traffic from and to points on the Murphy and Wilder branches of the Oregon Short Line, found to result in undue prejudice against the points on such branches and in undue preference of Nampa, Emmett, and Boise, to the extent of the difference in such rates. *State of Idaho, ex rel v. Director General*, 330.

Maintenance of rates on commodities, the rates on which are stated on a graded or mileage basis from and to points on the Wilder and Murphy branches of the Oregon Short Line, higher than from and to points on the Emmett and Boise branches, found to result in undue prejudice to extent that the branch-line differentials on the former exceed those maintained on like traffic from and to points on the latter branches for like distances from the main-line junction. *Id.* (337).

Loading and Unloading: Charges in addition to line haul charges, for unloading and reloading en route ordinary live stock destined to private stockyards adjacent to packing plants of complainants, while unloading and reloading such shipments destined to public stockyards without charge in addition to line-haul charges, found to result in undue prejudice to complainant in favor of competitors whose packing plants are adjacent to public stockyards. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44.

## Localities:

Arkansas points: Following *Arkansas Jobbers & Mfrs. Asso.*, 59 I. C. C., 662, local rates on grain and products from St. Louis, Mo., and from Cairo and Thebes, Ill., to certain points in Arkansas found unduly prejudicial to such Arkansas points and unduly preferential of Little Rock, Pine Bluff, and Fort Smith, Ark. Reasonable and nonprejudicial rates prescribed. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 475.

Boise, Idaho: Rates on run-of-mine coal from Sunnyside, Utah, to, found not unreasonable, discriminatory, or unduly prejudicial because they exceed the rates on the same grade of coal from Sunnyside to Twin Falls, Idaho. No competition shown to exist between complainant and consumers of run-of-mine coal at Twin Falls and no Sunnyside coal moves to that point. *Boise Gas Light & Coke Co. v. Director General*, as Agent, 607.

California points: Rates on fire brick from transcontinental groups A, D, E, and J to San Francisco and other California points, found not unduly prejudicial as compared with rates to north Pacific coast points. *Columbia Steel Co. v. Director General*, as Agent, 169.

## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

Cape Girardeau, Mo.: Combination rates on unmanufactured or leaf tobacco in hogsheads, any quantity, and in bulk, from certain points in Kentucky, Tennessee, and Indiana, to, found unreasonable and unduly prejudicial as compared with rates from the same points of origin to certain competing points. Reasonable joint rates prescribed and reparation awarded. *Roth Tobacco Co. v. St. L.—S. F. Ry. Co.*, 314.

Corinth, Miss.: Class rates from, to points in Tennessee between Corinth, and Jackson, Tenn., found unreasonable and unduly prejudicial to Corinth and its shippers, as compared with class rates to the same points from Jackson. Reasonable maximum distance rates prescribed. *Corinth Grocery Co. v. M. & O. R. R. Co.*, 320.

East Braintree, Mass.: Rates on petroleum and products, and fuel oil, from complainant's refinery located near East Braintree, on the Fore River R. R. Corporation, a common carrier short line, to destinations in New England, found unreasonable and unduly prejudicial in favor of competitors located within the Providence, R. I., switching district and at other shipping points, to extent they exceeded the standard distance basis of rates applicable from such competing points to the same New England destinations. Reasonable joint rates prescribed and reparation awarded. *Massachusetts Oil Refining Co. v. B. & A. R. R. Co.*, 535.

Indiana points: Class and commodity rates from, to St. Paul and Minneapolis, Minn., found unreasonable and unduly prejudicial to extent that they exceed the rates contemporaneously in effect from Illinois points and west-bank Mississippi River points in Iowa and Missouri for approximately equal distances. Public Service Commission of Indiana *v. A., T. & S. F. Ry. Co.*, 512.

Meridian, Miss.: Class and commodity rates between Meridian, Miss., Mobile, Selma, Montgomery, Birmingham, Demopolis, and Tuscaloosa, Ala., on the one hand, and certain points in Alabama within 200 miles of Meridian, on the other, proposed in compliance with the Commission's order in *Meridian Traffic Bureau*, 60 I. C. C., 5, for removal of undue prejudice found to exist against Meridian, found justified in some instances and not in others, and reasonable maximum distance scales prescribed. *Meridian Rate Case*, 179.

Muncie, Ind.: Rates on glass fruit jars, fruit-jar tops, and jelly glasses from, to points in Wisconsin and Minnesota, found unduly prejudicial to Muncie and preferential of Hillsboro, Ill., a competing point. Basis for establishment of nonprejudicial rates prescribed. *Ball Bros. Glass Mfg. Co. v. Director General*, 523.

New Jersey points: Third-class rates on wool in the grease were in effect from Boston and East Boston, Mass., to Passaic, Dundee, Clifton, and Garfield, N. J., while lower commodity rates were contemporaneously maintained to specified points in the Philadelphia, Pa., rate group. Subsequently such commodity rates to Philadelphia points were eliminated and both destination groups were placed on a parity. *Held*: Higher class rates charged on shipments moving during interim found not unreasonable or unduly prejudicial. *Botany Worsted Mills v. Director General*, as Agent, 556.

## PREFERENCES AND PREJUDICES—Continued.

## Localities—Continued.

- Oklahoma City, Okla.: Combination rates on fuller's earth from Midway, Quincy and Ellenton, Fla., to, found unreasonable and unduly prejudicial to extent that the components thereof from Memphis, Tenn., to Oklahoma City exceeded the components from Memphis to Cushing, Okmulgee, Tulsa, and Muskogee, Okla., and Independence and Arkansas City, Kans. Reparation awarded. Choate Oil Corp. v. Director General, as Agent, 562.
- Ramsay, Mont.: Domestic rate applicable on import shipment of nitrate of soda from Tacoma, Wash., to, found not unreasonable or unduly prejudicial as compared with domestic rate contemporaneously in effect from San Francisco, Calif., to Bacchus, Utah. Du Pont de Nemours & Co. v. Director General, as Agent, 501.
- Roundup and Geneva, Mont.: Rates on coal from, to certain destinations in North and South Dakota, found unreasonable and unduly prejudicial in favor of competitors shipping to the same points from Lake Superior ports and from mines in southern Illinois. Reasonable and nonprejudicial rates prescribed. Roundup Coal Mining Co. v. Director General, as Agent, 249.
- St. Joseph, Mo., and Omaha, Nebr.: Proposed reductions in rates on coal from mines in the Springfield, Ill., district served by the Chicago & Alton, and from mines in the southwestern field located in Missouri, Kansas, Oklahoma, and Arkansas to Kansas City, Mo.-Kans., and intermediate points, found not justified. Such reduced rates without corresponding reductions to St. Joseph and Omaha would widen the spread in rates existing between these points and would result in undue preference to Kansas City and in undue prejudice to St. Joseph and Omaha. Reduced Rates on Coal to Kansas City, Mo., 457.
- St. Paul, Minn.: Rates on coke from, to points in South Dakota, Iowa, Illinois, Wisconsin, and Michigan found unreasonable and unduly prejudicial to St. Paul and unduly preferential of Duluth, Minn., Milwaukee, Wis., Chicago, Ill., and St. Louis, Mo. Maximum bases prescribed and reparation denied. Minnesota By-Product Coke Co. v. Director General, as Agent, 480.
- Western points: Rates on certain kinds of paper and paper articles from points in Wisconsin, Minnesota, and Michigan to destinations in the west, southwest, and Mississippi Valley, found unreasonable and unduly prejudicial. Reasonable rates and relationships prescribed. Order in 61 I. C. C., 709, as modified in 64 I. C. C., 33, rescinded. Minnesota & Ontario Paper Co. v. N. P. Ry. Co., 571.
- Woodbury, N. J.: Class and commodity rates to and from Woodbury, found not unreasonable, unduly prejudicial or unjustly discriminatory as compared with rates to and from Philadelphia, Pa., and points taking the same rates. Belber Trunk & Bag Co. v. W. J. & S. R. R. Co., 490.
- Spotting Cars: Failure of defendants to move inbound and outbound cars between interchange tracks and points within complainants' plants under the line-haul rates or to compensate complainants therefor, found not to result in unreasonable, discriminatory, or unduly prejudicial charges. Complainants would not accept placement within their plants at defendants' convenience; the practice has been to deliver and receive the traffic at the interchange tracks; and complainants are accorded the same treatment as their competitors in the same district. Gulf States Steel Co. v. Director General, as Agent, 255.

## PREFERENCES AND PREJUDICES—Continued.

## State and Interstate:

Upon supplemental report, intrastate rates and charges of certain electric lines and certain short-line steam railroads, required by state authority to be maintained within Illinois, lower than the corresponding interstate rates and charges authorized in *Increased Rates*, 1920, 58 I. C. C., 220, found unduly preferential of intrastate shippers and localities, unduly prejudicial to interstate shippers and localities, and unjustly discriminatory against interstate commerce. Previous reports, 59 I. C. C., 350, and 60 I. C. C., 92. Intrastate Rates Within Illinois, 350.

Upon supplemental report, orders entered in 58 I. C. C., 610 and 63 I. C. C., 288, prescribing reasonable rates between Natchez and Vicksburg, Miss., and points in western Louisiana for the removal of undue prejudice and undue preference in favor of western Louisiana points, vacated. The unlawful situation which resulted in the issuance of those orders does not now exist and will not be restored and there is no real necessity for their further continuance. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 386.

Contention that, after undue prejudice against interstate commerce has been removed by compliance with the Commissions' order, the action of state authorities in approving the rates prescribed deprives the Commission of jurisdiction to require the continuance of the non-prejudicial adjustment, not sustained. *Id.* (388).

## "PREMISES."

Tariff rule, defining railroad premises to embrace private tracks constructed, maintained, or operated under a written agreement by which carrier reserves the right to use such tracks for itself or others, makes the written agreement the controlling factor rather than the right to use such tracks. *Western Petroleum Refiners Asso. v. A. & R. R. Co.*, 58 (60).

## PRICE.

The fact that some competitors may have enjoyed larger profits does not establish damage where it is not shown that the price of the commodity was controlled by any such competitors by virtue of a preferential rate. *Standard Oil Co. v. Director General*, as Agent, 37 (41-42).

Contention that since the price of the commodity here under consideration was fixed by the government, complainants were not damaged by the exaction of unreasonable rates, because they would not have received any more profit if lower rates had been in effect, and that an award of reparation would permit profits in excess of those allowed by the government, not sustained. *Tanners' Council v. Director General*, as Agent, 415 (419).

## PRIVATE CARS.

Maintenance of track-storage charges on gasoline and other articles requiring "inflammable" placards under regulations prescribed by the Commission, when held in tank cars on private tracks where ownership of the tracks and cars is the same, found not unreasonable or unlawful where the private tracks are described as "Railroad Premises" in a rule of carriers' tariffs. Charge has been in no way burdensome to shippers, and its purpose is to promote safety. *Western Petroleum Refiners Asso. v. A. & R. R. Co.*, 58.

PRIVATE SCALES. *See* SCALES.

**PRIVATE TRACKS.**

Maintenance of track-storage charges on gasoline and other articles requiring "inflammable" placards under regulations prescribed by the Commission, when held in tank cars on private tracks where ownership of the tracks and cars is the same, found not unreasonable or unlawful where the private tracks are described as "Railroad Premises" in a rule of carriers' tariffs. Charge has been in no way burdensome to shippers, and its purpose is to promote safety. *Western Petroleum Refiners Asso. v. A. & R. R. Co.*, 58.

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**PROFIT.**

The fact that some competitors may have enjoyed larger profits does not establish damage where it is not shown that the price of the commodity was controlled by any such competitors by virtue of a preferential rate. *Standard Oil Co. v. Director General, as Agent*, 37 (41-42).

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Complainant's prices were not always governed by the prices of its competitor. It did not meet the prices of its competitor on some of the shipments on which reparation is asked, and such shipments can not be segregated from those on which it had to shrink its profits in order to make the sale. *Held*: Complainant has failed to prove with sufficient particularity that it was damaged by reason of any unjust discrimination or undue prejudice that may have existed. *Albers Bros. Milling Co. v. Director General, as Agent*, 593.

**PROHIBITIVE RATES.**

The maintenance of rates at a high level is obviously of no direct advantage to the carriers where the traffic fails to move. *Utah State Automobile Asso. v. A., T. & S. F. Ry. Co.*, 8 (17).

While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. The maintenance of a rate that is too high may be one of the causes of which a light movement is the effect. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.* 377 (379).

**PROOF. See also EVIDENCE.**

In complying with Rule V of the Commission's Rules of Practice, complainants authorized to submit proof in the form of affidavits that freight charges were paid and borne by them. Carriers do not object to this form of proof. *Boston Chamber of Commerce v. Director General, as Agent*, 142 (144).

No reparation can be awarded for the exaction of an unreasonable rate where witness unable to give direct testimony as to who paid and bore the charges. *American Wood Pipe Co. v. Director General, as Agent*, 155 (156).

## PROOF—Continued.

Complainant's prices were not always governed by the prices of its competitor. It did not meet the prices of its competitor on some of the shipments on which reparation is asked and such shipments can not be segregated from those on which it had to shrink its profits in order to make the sale. *Held*: Complainant has failed to prove with sufficient particularity that it was damaged by reason of any unjust discrimination or undue prejudice that may have existed. *Albers Bros. Milling Co. v. Director General, as Agent*, 593.

PROPORTIONAL RATES. *See also* FACTOR.

Proposed increase in proportional rates on fruits and vegetables from New Jersey terminals of the Erie R. R. to Duane street, New York, N. Y., found justified in part. *Fruits and Vegetables to Duane St., N. Y.*, 135.

Charges on bituminous coal from Citizens mines A and B, located outside the city limits but in the Springfield, Ill., district, to intrastate and interstate points during federal control, assessed on the basis of the proportional rate to Springfield, plus the Springfield district rates beyond, found not unreasonable as compared with rates from other mines within that district which took the Springfield district basis of rates. *Citizens Coal Mining Co. v. Director General, as Agent*, 271.

Proportional commodity rates and minima applicable from Mississippi River crossings on pulled wool in the grease, in machine-pressed bales, originating at South St. Joseph, Mo., and Kansas City, Kans., and moving to points in trunk line territory and New England, found not unreasonable as compared with rates contemporaneously in effect from such Mississippi River crossings or Chicago, Ill., to the same destinations. *Swift & Co. v. Director General, as Agent*, 409.

May properly be somewhat lower than the corresponding local rates. *Id.* (413).

Proportional class rates between west-bank Mississippi River crossings and Mason City, Iowa, on traffic originating at or destined to official territory east of the Indiana-Illinois state line, published by carriers pursuant to the Commission's orders in *Interior Iowa Cases*, 46 I. C. C., 39, found not unreasonable or unduly prejudicial. *Alter v. Director General, as Agent*, 619.

PUBLIC CONVENIENCE AND NECESSITY. *See* CONVENIENCE AND NECESSITY.

## PUBLIC INTEREST.

If a carrier has traffic in its possession it should be allowed to handle it by its own line as far as it can unless the public interest would suffer thereby. *Routing on Coal from Western Maryland Ry. Mines*, 103 (108).

Both the legislative history and the provisions of the transportation act, 1920, make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the nation, and the principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest. *New England Divisions*, 196 (198).

The Commission's power over divisions is founded upon the public interest. Carriers are mutually dependent parts of the transportation system; and the public interest requires that all essential parts be maintained in effective working condition. *Id.* (199).

## PUBLIC INTEREST—Continued.

In a case involving divisions the Commission may, when the public interest so requires, grant immediate relief subject to later readjustments, as it has done in cases involving general increases or reductions in rates. Id. (204).

The interstate commerce act requires a practical administration, and prompt action where that is necessary in the public interest. Id. (204).

The shipping public must not be made to suffer because of a disagreement between carriers over divisions. The act prescribes a method for adjusting such controversies. Rate Cancellation from Indiana to Ohio, 449 (451).

PURPOSE OF ACT. *See also* CONSTRUCTION OF STATUTE.

The interstate commerce act is not only designed to cure violations thereof but also to prevent them. Salt from Louisiana Mines to Chicago, 81 (83).

Both the legislative history and the provisions of the transportation act, 1920, make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the nation, and the principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest. New England Divisions, 196 (198).

## RATE WAR.

The Commission does not feel that particular reductions in rates should be encouraged during a period when it is considering the question of general reductions in rates, especially in view of the admissions and assertions that such proposed reductions, if allowed to become effective, would mark the beginning of a rate war between certain carriers. Reduced Rates on Coal to Kansas City, Mo., 457 (467).

RAW MATERIAL. *See* MANUFACTURED ARTICLES.REARGUMENT. *See also* FURTHER HEARING; SUPPLEMENTAL REPORT.

Upon reargument, original report 59 I. C. C., 73, local rates to and from reconsignment points found unreasonable to extent they exceeded charges which would have accrued had tariffs provided for reconsignment at "hold points" at through rates plus reconsignment charges in effect prior to *Reconsignment Case*, 47 I. C. C., 590, or had rules subsequently established been in effect, which provided that if car has been placed but not unloaded or accepted it will be reconsigned at through rate plus reconsignment charges. Reparation awarded. *Boston Chamber of Commerce v. Director General*, as Agent, 142.

Upon reargument, divisions of joint class rates and similar joint commodity rates which divide on the class-rate basis, other than those in which the Bangor & Aroostook R. R. Co. participates, accruing to certain carriers in New England, found unjust, unreasonable, and inequitable for the future, and readjustment prescribed. Former report 62 I. C. C., 513. New England Divisions, 196.

REASONABLENESS OF RATE. *See* MEASURE OF RATE.RECIPROCAL DEMURRAGE. *See* DEMURRAGE.

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RECONSIGNMENT. *See also* DIVERSION.

Request received too late to accomplish diversion and shipment arrived at originally billed destination, where it was placed upon public delivery tracks. Refused by order notify consignee and subsequently reconsigned. *Held*: Fact that this was an order notify shipment did not preclude carrier from placing car for unloading prior to surrender of bill of lading in absence of instructions to the contrary, and as tariff provided that if a car was placed at original destination and reforwarded without being unloaded it would be subject to rates to and from reconsignment point, combination charged found not unreasonable or unlawful. *Sullivan Lumber Co. v. Director General, as Agent, 119.*

Upon reargument, original report 59 I. C. C., 73, local rates to and from reconsignment points found unreasonable to extent they exceeded charges which would have accrued had tariffs provided for reconsignment at "hold points" at through rates plus reconsignment charges, in effect prior to *Reconsignment Case*, 47 I. C. C., 590, or had rules subsequently established been in effect, which provided that if car has been placed but not unloaded or accepted it will be reconsigned at through rate plus reconsignment charges. Reparation awarded. *Boston Chamber of Commerce v. Director General, as Agent, 142.*

On kerosene moving from Independence, Kans., to Sheffield, Iowa, reconsigned to Minneapolis, Minn., combination rates to and from reconsignment point assessed. Applicable tariff named a joint rate from origin to destination plus a reconsignment charge. *Held*: Combination assessed illegal and shipments overcharged. Refund directed. *Standard Asphalt & Refining Co. v. Director General, as Agent, 313.*

Penalty charge of \$10 per car per day on lumber held for reconsignment beyond 48 hours after 7 a. m. of day following notice of arrival found not to have been unreasonable or otherwise unlawful in the past. However, under present conditions with a great number of idle freight cars, and an entire absence of congestion throughout the country, the charge is, and while present conditions continue will be, unreasonable. *American Wholesale Lumber Asso. v. Director General, as Agent, 393.*

Contention that carriers having established through rates and provided for reconsignment it was unlawful to assess penalty charges upon shipments held on account of embargoes, notwithstanding tariff provisions to the effect that reconsignment orders would not be accepted to a point against which an embargo was in force at the time the shipment was forwarded from point of origin, not sustained. *Id. (398).*

Proposal of the Chicago, Peoria & St. Louis R. R. Co. to cancel the \$3 reconsignment charge on lumber when instructions are received prior to arrival of car, and to reduce the charge from \$7 to \$3 when instructions are received after arrival of car, found not justified. The \$3 and \$7 charges now in effect are generally uniform on all railroads throughout the country and were approved by the Commission in the *Reconsignment Case*, 47 I. C. C., 590. *Id. (408).*

Negligence can not be imputed to carrier's agent for failure to divert a shipment before arrival at originally billed destination where only information shown in reconsignment order was car number and initial and that car was in transit to shipper at original destination. Shipper failed to give point of origin, route of movement, commodity, or any other information, and made no request to protect the through rate. Facts sufficient to justify agent in holding the order until arrival of the car and executing the instructions of the shipper at that time. *Reeves Coal & Dock Co. v. Director General, as Agent, 469.*

## RECONSIGNMENT—Continued.

Reason and common prudence would dictate that a shipper asking for diversion of a car in transit should give such information concerning it as will enable the carriers to determine not only the character of the shipment but also between what points it is moving, in order that they may form some idea of where it can be intercepted. *Id.* (471).

On account of various strikes embargoes were placed against certain points. Demurrage charges assessed on shipments on which reconsignment to such points refused, found illegal as applicable tariff contained no provision prohibiting reconsignment to embargoed points. Reparation awarded. *Schaefer v. L. V. R. R. Co.*, 549.

Demurrage charges assessed on shipments originating during existence of an embargo, but which were ordered reconsigned subsequent to the removal of such embargo, found unreasonable. Such a rule was condemned by the Commission in the *Reconsignment Case*, 47 I. C. C., 590, and other cases. Reparation awarded. *Id.* (549).

Although applicable tariff governing reconsignment did not contain a limitation upon reconsignment to embargoed points, carrier contended that the provision in a general reconsignment tariff was broad enough to put shippers upon notice, and that demurrage accruing thereunder was legally assessed. *Held*: This position untenable, since shipper's rights and obligations are determined by the applicable governing tariff and not by knowledge of carrier's usual practice indicated by other general tariffs. *Id.* (551).

Embargoes brought about by severe congestion of traffic were in effect when shipments originated, but since tariffs contained no restriction against reconsignment to embargoed points, demurrage charges assessed for car detention resulting therefrom, found illegal. Reparation awarded. *Krauss Bros. Lumber Co. v. Director General, as Agent*, 637.

Obligation to accept articles tendered for transportation is governed by general principles of law; to reassign, by rules lawfully on file with the Commission. The right to refuse shipments temporarily for good cause by establishment of embargoes, which are not required to be filed, is recognized. The right to reassign depends entirely upon the construction of the rules, which are required to be filed in the same manner as rates. If carriers do not restrict such rules to the extent of their capacity to perform the service, the shipper can not be held liable for detention when it is not directly responsible therefor and can not abate the cause thereof, as in the case of an embargo, which is a disability of the carrier. *Id.* (639).

Tack plate shipped from Vandergrift, Pa., to Baltimore, Md., for export, but due to vessel for which originally intended being commandeered by one of the nations then at war, was reconsigned to New York, N. Y., or Philadelphia, Pa., and exported from those ports. *Held*: Domestic demurrage charges accruing at Baltimore found not unreasonable following *Lowry Lumber Co.*, 58 I. C. C., 113, and *Heid Brothers*, 55 I. C. C., 416. *British United Shoe Machinery Co. (Ltd.) v. P. R. R. Co.*, 661.

## RECONSIGNMENT—Continued.

Because of an accumulation of barges alongside vessel, delivery from car float to vessel could not be made. Cars were floated to float bridge adjacent to pier and thence moved along tracks and out upon the pier for delivery, for which service a class rate was assessed. *Held*: Extra movement to float bridge and beyond amounted to a reconsignment. Charges assessed found unreasonable to extent they exceeded those provided in a local switching tariff for similar movements to cold storage warehouses, plus a reconsignment charge. Reparation awarded. *Armour & Co. v. Director General*, as Agent, 760.

## REDUCTION IN RATES.

## In General:

The subsequent reduction of rates is not in itself sufficient to justify a finding of unreasonableness. *Champlin v. Director General*, as Agent, 309 (310).

The Commission does not feel that particular reductions in rates should be encouraged during a period when it is considering the question of general reductions in rates, especially in view of the admissions and assertions that such proposed reductions, if allowed to become effective, would mark the beginning of a rate war between certain carriers. *Reduced Rates on Coal to Kansas City, Mo.*, 457 (467).

## By Carriers:

Increased charges initiated by the Director General under general order No. 28 and assessed on stone moving during federal control from points in the Indiana limestone district to various destinations found unreasonable to extent that charges for preliminary services from quarries to mills and similar movements, exceeded charges subsequently established. Reparation awarded. *Bedford Cut Stone Co. v. Director General*, as Agent, 26.

Following *Morris & Co.*, 64 I. C. C., 435, rate on fresh frozen beef from Columbus, Ohio, to New York, N. Y., found unreasonable to extent it exceeded lower rate from London, Ohio, applicable under rule 77 of Tariff Circular 18-A. No request made for application of lower rate prior to movement, but such rate subsequently established from Columbus. Reparation awarded. *Cincinnati Abattoir Co. v. Director General*, as Agent, 65.

Class rates on rabbits, not dressed, from points in Kansas and Nebraska to Chicago, Ill., found unreasonable to extent they exceeded lower commodity rates subsequently established. Reparation awarded. *Jerpe Commission Co. v. Director General*, as Agent, 131.

Combination rates on coal, both factors of which were increased under general order No. 28 of the Director General found not unreasonable as compared with lower joint rates subsequently established, constructed by addition of but a single increase to the aggregates of the several factors. The application of general increases under that order to the several factors of a combination does not, in and of itself, warrant a condemnation of the increased aggregate rate. *Nye Schneider Fowler Co. v. Director General*, As Agent, 145.

Minimum weight of 40,000 pounds for each car used, applicable on fir piling, in triple carloads, from Kulshan to Bellingham, Wash., during federal control, found unreasonable to extent it exceeded minimum of 33,000 pounds subsequently established, and subject to a minimum charge of \$15 per car. Reparation awarded. *Ambrose v. Director General*, as Agent, 153.

## REDUCTION IN RATES—Continued.

## By Carriers—Continued.

Increases under general order No. 28 of the Director General resulted in widening differentials which existed prior to such increases. Subsequently rates reduced, but former differential not restored. *Held*: Neither Director General's departure from terms of his general orders nor the subsequent reduction of rates is necessarily proof that rates were unreasonable. *Union Traction Co. of Indiana v. Director General*, as Agent, 157.

Combination rates on bituminous and small sizes of anthracite coal from points in Pennsylvania and from Fairmont, W. Va., to Rumford and South Brewer, Me., both factors of which were increased under general order No. 28 of the Director General, found unreasonable as compared with rates between others points to which but a single increase to the through rate was added. Reparation awarded to basis of rates subsequently established. *Oxford Paper Co. v. Director General*, as Agent, 159.

Rates on hollow building tile from Coral Ridge, Ky., to Charleston, S. C., found not unreasonable as compared with lower rate from Louisville, Ky., a farther distant point, which lower rate was subsequently established from Coral Ridge. *Coral Ridge Clay Products Co. v. Director General*, as Agent, 172.

Charges at l. c. l. rates on such shipments in barrels, based on actual weight, assessed for the return transportation in tank cars of sulphuric-acid sediment or sludge of no commercial value, found unreasonable. Carrier subsequently established a rule under which no charge would be made if the remaining substance is without commercial value and there is no recovery, nor commercial consideration given to the substance by the shipper or consignee. Reparation awarded. *Tennessee Copper Co. v. Director General*, as Agent, 238.

Class rate on a sporadic shipment of roasted zinc ore from Canton, Ohio, to Terre Haute, Ind., found not unreasonable as compared with lower commodity rate subsequently established. Such lower rate is much lower than commodity rates on zinc ore found not unreasonable in *Illinois Zinc Co.*, 61 I. C. C., 92. *Grasselli Chemical Co. v. Director General*, as Agent, 263.

Class rates on gasoline and refined oils from North Baton Rouge, La., to Guin and Carbon Hill, Ala., found unreasonable to extent they exceeded lower commodity rate in effect between the same points but which were restricted in error to apply via more circuitous routes, which restriction was subsequently removed. Reparation awarded. *Standard Oil Co. (Ky.) v. Director General*, as Agent, 274.

Class rates on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Greensboro, N. C., and Columbia, S. C., during federal control, found unreasonable to extent they exceeded lower commodity rates subsequently established, request therefor having been made before shipments moved. Reparation awarded. *American Agricultural Chemical Co. v. Director General*, as Agent, 277.

Charges applicable on scrap iron between points within the switching limits of Cincinnati, Ohio, and Andrews, Ky., composed of a switching charge, and a line-haul charge with minimum and maximum of \$15 per car, found unreasonable to extent that charges for the line-haul movement exceed a minimum of \$6.50 and maximum of \$10 per car, subsequently established. Reparation awarded. *Hilb & Bauer v. Director General*, as Agent, 279.

## REDUCTION IN RATES—Continued.

## By Carriers—Continued.

Class rates on lumber from Preston and Logansport, La., to Eastland and Ranger, Tex., found unreasonable to extent they exceeded lower blanket commodity rate contemporaneously in effect between points in this territory for joint-line hauls of the same or greater distances, which lower rate was subsequently established between the points here involved. Reparation awarded. *Weaver Bros. Lumber Co. v. Director General*, as Agent, 297.

Rate on self-rising compound flour found not unreasonable as compared with lower rate on grain products, which lower rate was subsequently made applicable to self-rising compound flour. *Champlin v. Director General*, as Agent, 309.

Class rate on imported nitrate of soda from Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, during federal control, found unreasonable to extent it exceeded lower commodity rate subsequently established after request therefor made. *Barrett Co. v. Director General*, as Agent, 381.

Proposal of the Chicago, Peoria & St. Louis R. R. Co. to cancel the \$3 reconsignment charge on lumber when instructions are received prior to arrival of car, and to reduce the charge from \$7 to \$3 when instructions are received after arrival of car, found not justified. The \$3 and \$7 charges now in effect are generally uniform on all railroads throughout the country, and were approved by the Commission in the *Reconsignment Case*, 47 I. C. C., 590. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393 (408).

Fifth-class rate charged on imported pickled sheep skins from Pacific coast ports to Atlantic seaboard destinations found applicable but unreasonable to extent it exceeded lower commodity rate on domestic shipments of sheep slats (green), which lower commodity rate was subsequently established on imported pickled sheep skins. Reparation awarded. *Tanners' Council v. Directors General*, as Agent, 415.

Combination rate on manganese ore from First Ford, Va., to Pittsburgh and Sharpsburg, Pa., found unreasonable to extent it exceeded lower joint rate subsequently established, which lower rate compares favorably with other rates in effect on the same commodity in the same general territory for comparable distances. Reparation awarded. *Chevalier v. Director General*, as Agent, 421.

Combination through rate on bauxite ore from Republic, Ga., to Chicago Heights, Ill., found not unreasonable because of the subsequent reduction of the factor from Ohio River crossings. Few shipments have been made from and to these points, and no movement in the near future is contemplated. *General Chemical Co. v. Director General*, as Agent, 443.

Proposed reductions in rates on coal from mines in the Springfield, Ill., district served by the Chicago & Alton and from mines in the southwestern field located in Missouri, Kansas, Oklahoma, and Arkansas to Kansas City, Mo.-Kans., and intermediate points, found not justified. Such reduced rates without corresponding reductions to St. Joseph, Mo., and Omaha, Nebr., would widen the spread in rates existing between these points and would result in undue preference to Kansas City and in undue prejudice to St. Joseph and Omaha. *Reduced Rates on Coal to Kansas City, Mo.*, 457.

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## REDUCTION IN RATES—Continued.

## By Carriers—Continued.

The Commission does not feel that particular reductions in rates should be encouraged during a period when it is considering the question of general reductions in rates, especially in view of the admissions and assertions that such proposed reductions if allowed to become effective would mark the beginning of a rate war between certain carriers. *Id.* (467).

Rate on slag from Emaus, Pa., to West Collingswood, N. J., found unreasonable as compared with lower rate from Bethlehem, Pa., and other points, which lower rate was subsequently established from Emaus. Reparation awarded. *Buckland v. Director General*, as Agent, 503.

The mere fact that some other shipper may have obtained a reduction in his rate prior to the date complainants obtained a reduction in their rates does not indicate that complainants paid unreasonable rates or were unduly prejudiced or in any way damaged within the meaning of the law. *Wofford Oil Co. v. Director General*, as Agent, 509 (510).

Rates on coal from Tennessee mines served by the Tennessee Central and from western Kentucky mines served by the L. & N. to Nashville, Tenn., found unreasonable to extent they exceeded lower rates subsequently established. Reparation awarded. *Traffic Bureau of Nashville v. Director General*, as Agent, 529.

Rate on gasoline, in tank-car loads, from Bryanmound, Tex., to Birmingham, Ala., found unreasonable as compared with lower rate from various other points to Birmingham for similar distances. Reparation awarded to basis of rate subsequently established. *Wofford Oil Co. v. Director General*, as Agent, 601.

Rates on fertilizer, in bags, from Cleveland, Ohio, to Minford, Ohio, during federal control, found unreasonable as compared with lower rate maintained in the opposite direction, which lower rate was subsequently established via route of movement. Reparation awarded. *Swift & Co. v. Director General* as Agent, 615.

Rates on auto-body woodwork, k. d., found unreasonable as compared with lower rates on wagon material in the rough or wholly or partly finished, which lower rate was subsequently made applicable to auto-body woodwork. Reparation awarded. *Chevrolet Motor Co. of Texas v. Director General*, as Agent, 617.

Fifth-class rate charged on blister copper from Port Colborne, Ontario, Canada, to Constable Hook and Chrome, N. J., found unreasonable to extent it exceeded 78 per cent of the commodity rate on copper from Chicago to New York rate points, subsequently established. Reparation awarded. *International Nickel Co. v. Director General*, as Agent, 627.

Class rates on rough steel shafting from Camden, N. J., Buffalo, N. Y., Titusville and Nicetown, Pa., and Gary, Ind., to Portland, Ore., and Tacoma, Wash., found unreasonable as compared with lower commodity rates on finished iron and steel articles of greater bulk and more susceptible of damage. Reparation awarded to basis of commodity rate subsequently established. *Northwest Steel Co. v. C., B. & Q. R. R. Co.*, 633.

## REDUCTION IN RATES—Continued.

## By Carriers—Continued.

Present classification rating of third class on hipolite found not unreasonable. Former any-quantity ratings of first class in official and second-class in western and southern classifications found unreasonable, as applied to c. l. shipments, to the extent that they exceeded third class, subsequently established. Reparation awarded. *Hipolite Co. v. A., C. & Y. Ry. Co.*, 666.

Fertilizer rate legally applicable and assessed on oyster shells from Apalachicola, Fla., to Mobile, Ala., composed of a combination to Montgomery, Ala., and thence back to Mobile, authorized under rule 5 (b) of Tariff Circular 18-A, found unreasonable as compared with rates on crushed oyster shells from various southern points to numerous destinations for greater distances, and to extent it exceeded joint rate subsequently established. Reparation denied. *Gulf City Mfg. Co. v. Director General*, as Agent, 763.

## By Commission :

Rates on refined gasoline from the midcontinent field, Colorado, Wyoming and California to Salt Lake City, Ogden, and Provo, Utah, found unreasonable in that it compares unfavorably with the rate to Denver, Colo., Cheyenne, Wyo., and other Colorado common points. Reasonable rates prescribed. *Utah State Automobile Asso. v. A., T. & S. F. Ry. Co.*, 8.

Rates on green salted sheep pelts, in straight carloads, and on green salted hides and green salted sheep pelts, in mixed carloads, from Denver, Colo., to St. Joseph, Mo., and Chicago, Ill., found unreasonable to extent they exceeded rates on green salted hides in straight carloads. Reasonable maximum rates prescribed and reparation awarded. *Swift & Co. v. C., B. & Q. R. R. Co.*, 33.

Increases applied under *Increased Rates*, 1920, 58 I. C. C., 220, on lumber and forest products from various states south of the Ohio River to c. f. a. and other defined territories, disturbed the relationship formerly existing between northern and southern producing points to common markets, and attributed to a general depression in the lumber industry. Rates as so increased found unreasonable for the future and reasonable basis bearing a closer relationship to that which existed prior to the increases prescribed. *Southern Hardwood Traffic Asso. v. I. O. R. R. Co.*, 68.

Sixth-class rate on steel rails from St. Louis, Mo., to Springfield, Ill., found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect from St. Louis to points north of Springfield, from St. Louis to Chicago, Ill., and from St. Louis to Springfield via routes other than route of movement. Reasonable maximum rate prescribed and reparation awarded. *Midcontinent Equipment & Machinery Co. v. C. & A. R. R. Co.*, 151.

Rates on coal from the Castle Gate district in Utah and Rock Springs, Wyo., to certain points in Nevada found unreasonable as compared with the corresponding rates to destinations of similar or greater distances in surrounding states. Reasonable rates prescribed. *Nevada Public Service Commission v. A., T. & S. F. Ry. Co.*, 216.

Upon further hearing, rates on O-Cedar polish in glass, boxed, and in metal cans, boxed, c. l., and on mops, c. l. and l. c. l., found unreasonable and reasonable rates prescribed. Former report 55 I. C. C., 733. *Channel Chemical Co. v. A., T. & S. F. Ry. Co.*, 235.

## REDUCTION IN RATES—Continued.

## By Commission—Continued.

Rates on hogs in single-deck cars from Kansas City, Mo.-Kans., and St. Joseph, Mo., to Oklahoma City, Okla., found unreasonable to extent they exceeded rates prescribed in *Wilson & Co.*, 62 I. C. C., 171. Reparation awarded and reasonable rates for the future prescribed. *Morris & Co. v. Director General*, as Agent, 282.

Combination rates on unmanufactured or leaf tobacco in hogsheads, any quantity, and in bulk, from certain points in Kentucky, Tennessee, and Indiana, to Cape Girardeau, Mo., found unreasonable and unduly prejudicial as compared with rates from the same points of origin to certain competing points. Reasonable joint rates prescribed and reparation awarded. *Roth Tobacco Co. v. St. L.-S. F. Ry. Co.*, 314.

Rates on yellow-pine lumber from Ranger, Tex., to Duncan, Tulsa, and Walters, Okla., found unreasonable to extent they exceeded the rate from Cisco and Weatherford, Tex., to Tulsa. Reasonable maximum rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. T. & P. Ry. Co.*, 327.

Upon further hearing, rates on coal from Dawson, N. Mex., to Clarkdale and Jerome, Ariz., found unreasonable as compared with rates prescribed in *Arizona Corp. Commission*, 28 I. C. C., 428, from Gallup, N. Mex., to various Arizona points. Finding in original report 57 I. C. C., 300, reversed; reasonable rates prescribed and reparations awarded. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.*, 377.

Findings in original report, 60 I. C. C., 583, that increases in rates on acid from Hillsboro, Ill., to certain Ohio River crossings were justified, modified on further hearing. Increased rates found to be no longer justified as rates from Hillsboro are no longer on the basis generally in effect in this part of c. f. a. territory and the rates from Copperhill, Tenn., to Cincinnati, Ohio, have the effect of eliminating Hillsboro from that market. Acid from Hillsboro to Ohio River Points. 383.

Rates on green coffee from New Orleans, La., to Jackson, Miss., found not unreasonable prior to January 28, 1920, on which date such rates were revised to remove a great disparity and restore a long continued relationship which was disrupted by the increases of the Director General under general order No. 28. Such rates were not, distance considered, above the general level of rates to points in Mississippi. Rates on and after January 28 found unreasonable and reasonable rates prescribed and reparation awarded. *MacGowan Coffee Co. v. I. C. R. R. Co.*, 389.

Rates on pulled wool in the grease, in machine-pressed bales, from Chicago, Ill., to points in trunk line territory and New England, which have been maintained for many years and resulted from the Commission's suggestion in *Traugott, Schmidt & Sons*, 23 I. C. C., 684, found not unreasonable in the past but unreasonable for the future. Reasonable rates prescribed and reparation denied. *Swift & Co. v. Director General*, as Agent, 409.

Rate structure on petroleum and its products from the Burkburnett and Ranger groups in Texas and from Shreveport, La., to Kansas City and St. Louis, Mo., found unreasonable and reasonable maximum rates prescribed. *Western Petroleum Refiners Asso. v. Director General*, 426.



## REDUCTION IN RATES—Continued.

## By Commission—Continued.

Rates on cement from points in the Kansas gas belt and from Dewey, Okla., to points in Nebraska, South Dakota, Wyoming, Iowa, and Missouri found unreasonable. Carriers failed to comply with the original order in the *Cement Investigation*, 48 I. C. C., 201, and as a result of the supplemental proceeding in 52 I. C. C., 225, they were revised, such revision involving a reduction in the rates. Reparation awarded. *Iola Cement Mills Traffic Asso. v. Director General*, as Agent, 495.

Rates on coal-tar pitch, in barrels, and coal tar, in tank-car loads, from Minneapolis, Minn., to Aberdeen, S. Dak., found unreasonable as compared with rates to Sioux Falls, S. Dak., and Sioux City, Iowa. Reasonable rates prescribed and reparation awarded. *City of Aberdeen, S. Dak., v. Director General*, as Agent, 505.

Rates on certain kinds of paper and paper articles from certain points in Indiana, Illinois, Missouri, and Kansas to Oklahoma City and Okmulgee, Okla., and Wichita, Kans., found unreasonable. Reasonable rates prescribed and reparation awarded. *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 571 (584-585).

## REIMBURSEMENT OF DEFICITS DURING FEDERAL CONTROL.

The word "deficit" as used in paragraph (a) of section 204 of the transportation act, 1920, construed to mean a deficiency or decrease in a carrier's railway operating income for that portion (as a whole) of the period of federal control during which it operated its own railroad as compared with its average railway operating income for the corresponding portions of the test period. Construction of the word "Deficit," 785. The fact that a carrier has sustained a deficit while privately operated during the federal control period is not determinative either of the carrier's right to reimbursement or of the amount to which it may be entitled. *Id.* (770).

If the word "deficit" in the definition of carrier in paragraph (a) of section 204 of the transportation act, 1920, is construed as a deficiency or decrease in income under private operation in the federal control period as compared with the income during the test period, the definition of "carrier" is completely harmonized with both the letter and spirit of the remaining paragraphs of that section. *Id.* (771).

If the word "deficit" in the definition of carrier in paragraph (a) of section 204 of the transportation act, 1920, is given its technical meaning as used by accountants, the effect is to make the right to reimbursement contingent upon the carrier's having sustained a technical or absolute deficit while privately operated in the federal control period, a result which is in direct conflict with the plan of reimbursement set forth in detail in the section. *Id.* (771).

In the definition of the word "carrier" in paragraph (a) of section 204 of the transportation act, 1920, Congress meant those carriers which sustained losses in income under private operation in the federal control period as compared with the test period. *Id.* (771).

The idea that Congress, in the definition of "carrier," intended those carriers only which sustained actual deficits under private operation in the federal control period, is not only in direct conflict with the plan of reimbursement detailed in the remaining paragraphs of the section but it is negated by the fact that such a classification of carriers would be purely arbitrary and wholly unsupported by any sound reason. *Id.* (771).

RELATIONSHIP OF RATES. *See also* ADJUSTMENT OF RATES.

Fact that in the *Midcontinent Oil Case*, 36 I. C. C., 109, and in subsequent cases which have followed it, a differential of 5 cents was established between the rates on crude and refined oils does not warrant the conclusion that this should be the differential under all circumstances and particularly where the rates are larger in amount. *Utah State Automobile Asso. v. A., T. & S. F. Ry. Co.*, 8 (17).

A proper rate relationship between competitive groups is in many respects of greater importance to the shipping public than the measure of the rate itself. *Salt from Louisiana Mines to Chicago*, 81 (93).

Rates on corn and oats were increased under general order No. 28 of the Director General to the wheat rate basis, while from and to other points in the same general territory such rates were increased but 25 per cent, not exceeding 6 cents, thereby disturbing the level of rates which had existed for a number of years. Subsequently rate parity restored by application of increases under that order without regard to the wheat rates. Rates charged during interim found unreasonable and reparation awarded. *Flanley Grain Co. v. Director General*, as Agent, 126.

Upon further hearing, finding in *The Wisconsin Rate Cases*, 44 I. C. C., 602, adhered to, and the class rates from La Crosse, Wis., to New York, N. Y., found unreasonable to extent they exceed the class rates in effect from New York to La Crosse. Class rates from La Crosse to other points in trunk-line territory and New England found unreasonable to extent that they do not bear the same relation to the rates herein found reasonable for application from La Crosse to New York as heretofore borne. *La Crosse Shippers' Asso. v. A. A. R. R. Co.*, 371.

Wool originating in the far west contains more dirt and grease and consequently is heavier than the wool produced in official territory. Clearly the rates on such far-western wool from Chicago, Ill., should be lower than the rates applicable throughout official territory which the Commission has found appropriate for application on the lighter eastern wool; and they should bear a fair relation to the proportional commodity rates on western wool from the Mississippi River crossings. *Swift & Co. v. Director General*, as Agent, 409 (413).

Rate structure on petroleum and its products from the Burkburnett and Ranger groups in Texas and from Shreveport, La., to Kansas City and St. Louis, Mo., found unreasonable and reasonable maximum rates prescribed. *Western Petroleum Refiners Asso. v. Director General*, 423.

Following *Arkansas Jobbers & Mfrs. Asso.*, 59 I. C. C., 662, rates on coarse grains 10 per cent less than those on wheat prescribed. *Arkansas Jobbers & Mfrs. Asso. v. Director General*, 475 (479).

Rates on coke from St. Paul, Minn., to points in South Dakota, Iowa, Illinois, Wisconsin, and Michigan found unreasonable and unduly prejudicial to St. Paul and unduly preferential of Duluth, Minn., Milwaukee, Wis., Chicago, Ill., and St. Louis, Mo. Maximum bases prescribed and reparation denied. *Minnesota By-Product Coke Co. v. Director General*, as Agent, 480.

Rates on certain kinds of paper and paper articles from points in Wisconsin, Minnesota, and Michigan to destinations in the west, southwest, and Mississippi Valley found unreasonable and unduly prejudicial. Reasonable rates and relationships prescribed. Order in 61 I. C. C., 709, as modified in 64 I. C. C., 33, rescinded. *Minnesota & Ontario Paper Co. v. N. P. Rty. Co.*, 571.

66 I. C. C.

## RELATIONSHIP OF RATES—Continued.

Although printing increases the value by about 10 per cent, printed and unprinted bags are frequently shipped together, and in such instances any higher rate on printed bags would apply to the entire shipment.

*Held:* Higher rates on printed than on unprinted bags found not justified. *Id.* (573).

The grouping of paper and paper articles into three specified groups, with specific minimum for each group and minimum carload rule applicable to all groups, approved. *Id.* (573-574).

Rates on printing and writing paper, and on paper or paper articles grouped therewith, found unreasonable to extent they exceed by more than 10 and 33½ per cent, respectively, the corresponding rates on newspaper. *Id.* (575, 583).

Due to the application of increases under general order No. 28 of the Director General, the differential relationship of rates on bituminous coal from group mines in Indiana and Illinois to Chicago, Ill., disrupted. Subsequently preexisting relationship restored. *Held:* Failure to observe the terms of that order, filed with the Commission by the President through his duly appointed agent, does not prove that the rates established thereunder were unreasonable. *Carney v. Director General, as Agent*, 671.

Proposed increased rate on window glass from Kansas and Oklahoma points to Sioux Falls, S. Dak., which would disturb the long standing spread between the rates to Sioux Falls and practically every other related point, found not justified. Window Glass from Kansas and Oklahoma to Sioux Falls, 757.

## RELATIVE ADJUSTMENT. See ADJUSTMENT OF RATES.

## RELATIVE RATES.

Aberdeen, S. Dak.: Rates on coal-tar pitch, in barrels, and coal tar, in tank-car loads, from Minneapolis, Minn., to, found unreasonable as compared with rates to Sioux Falls, S. Dak., and Sioux City, Iowa. Reasonable rates prescribed and reparation awarded. *City of Aberdeen, S. Dak., v. Director General, as Agent*, 505.

Boise, Idaho: Rates on run-of-mine coal from Sunnyside, Utah, to, found not unreasonable, discriminatory, or unduly prejudicial because they exceed the rates on the same grade of coal from Sunnyside to Twin Falls, Idaho. No competition shown to exist between complainant and consumers of run-of-mine coal at Twin Falls and no Sunnyside coal moves to that point. *Boise Gas Light & Coke Co. v. Director General, as Agent*, 607.

Bryanmound, Tex.: Rate on gasoline, in tank-car loads, from, to Birmingham, Ala., found unreasonable as compared with lower rate from various other points to Birmingham for similar distances. Reparation awarded to basis of rate subsequently established. *Wofford Oil Co. v. Director General, as Agent*, 601.

Chicago Heights, Ill.: Combination through rate on bauxite ore from Republic, Ga., to, found not unreasonable as compared with joint rates to Detroit, Mich, Erie, Pa., and Buffalo, N. Y., for similar distances. *General Chemical Co. v. Director General, as Agent*, 443.

Chicago, Ill.: Rates on animal tankage from, to Little Rock, Ark., found not unreasonable as compared with rates from and to other points for similar distances. *Darling & Co. v. Director General, as Agent*, 149.

## RELATIVE RATES—Continued.

Clarksville, Tenn.: Rates on coal from western Kentucky mines served by the L. & N. R. R., to, found unreasonable to extent it exceeded the rate to Nashville, Tenn. Record held open for proof of damage. Traffic Bureau of Nashville *v.* Director General, as Agent, 529.

Coburg and Fontanelle, Iowa, and Adams, Nebr.: Rates on coke from Terre Haute, Ind., to, found not unreasonable as compared with rates between other points in the same general territory for similar distances. National Supply Co. *v.* C., B. & Q. R. R. Co., 604.

Coral Ridge, Ky.: Rates on hollow building tile from, to Charleston, S. C., found not unreasonable as compared with lower rate from Louisville, Ky., a farther distant point, which lower rate was subsequently made applicable from Coral Ridge. Coral Ridge Clay Products Co. *v.* Director General, as Agent, 172.

Dawson, N. Mex.: Upon further hearing, rates on coal from, to Clarkdale and Jerome, Ariz., found unreasonable as compared with rates prescribed in *Arizona Corp. Commission*, 28 I. C. C., 428, from Gallup, N. Mex., to various Arizona points. Finding in original report 57 I. C. C., 300, reversed; reasonable rates prescribed and reparation awarded. United Verde Extension Mining Co. *v.* U. V. & P. Ry. Co., 377.

Emaus, Pa.: Rate on slag from, to West Collingswood, N. J., found unreasonable as compared with lower rate from Bethlehem, Pa., and other points, which lower rate was subsequently established from Emaus. Reparation awarded. Buckland *v.* Director General, as Agent, 503.

First Ford, Va.: Combination rate on manganese ore from, to Pittsburgh and Sharpsburg, Pa., found unreasonable to extent it exceeded lower joint rate subsequently established, which lower rate compares favorably with other rates in effect on the same commodity in the same general territory for comparable distances. Reparation awarded. Chevalier *v.* Director General, as Agent, 421.

Illinois points: Rates on bituminous coal from mines in the Springfield district and in the Peoria and Fulton county groups, in Illinois, to Peoria, Ill., during federal control, found not unseasonable, as they compare favorably with numerous rates on coal for comparable distances between other points in the same territory. Central Illinois Light Co. *v.* Director General, as Agent, 623.

Mereaux and North Baton Rouge, La.: Rates on gasoline, in tank-car loads, from, to Birmingham and Alabama City, Ala., found not unreasonable as compared with rates to the same destinations from various other points for greater distances. Wofford Oil Co. *v.* Director General, as Agent, 509 (510).

Mobile, Ala.: Rates on printing paper from Hamilton, Ohio, to, for export, found not unreasonable or unduly prejudicial as compared with lower rates on the same commodity from Hamilton to Norfolk, Va., and New York, N. Y. Ault & Wiborg Co. *v.* Director General, as Agent, 247.

Morrilton, Ark.: Combination rate on cypress piling from Hargrove Switch and Cardwell, Mo., to, found unreasonable to extent it exceeded lower joint rate to Van Buren, Ark., and other points for greater distances. Reparation awarded. Nebraska Bridge Supply & Lumber Co. *v.* Director General, as Agent, 42.

## RELATIVE RATES—Continued.

Nevada points: Rates on coal from the Castle Gate district in Utah and Rock Springs, Wyo., to certain points in Nevada found unreasonable as compared with the corresponding rates to destinations of similar or greater distances in surrounding states. Reasonable rates prescribed. *Nevada Public Service Commission v. A., T. & S. F. Ry. Co.*, 216.

Oklahoma City and Okmulgee, Okla., and Wichita, Kans.: Rates on certain kinds of paper and paper articles from certain points in Indiana, Illinois, Missouri, and Kansas to, found unreasonable. Reasonable rates prescribed and reparation awarded. *Minnesota & Ontario Paper Co. v. N. P. Ry. Co.*, 571 (584-585).

Preston and Logansport, La.: Class rates on lumber from, to Eastland and Ranger, Tex., found unreasonable to extent they exceeded lower blanket commodity rate in effect between points in this territory for joint line hauls of the same or greater distances, which lower rate was subsequently established between the points here involved. Reparation awarded. *Weaver Bros. Lumber Co. v. Director General, as Agent*, 297.

Ranger, Tex.: Rates on yellow-pine lumber from, to Duncan, Tulsa, and Walters, Okla., found unreasonable to extent they exceeded the rate from Cisco and Weatherford, Tex., to Tulsa. Reasonable maximum rates prescribed and reparation awarded. *Parkersburg Rig & Reel Co. v. T. & P. Ry. Co.*, 327.

St. Joseph, Mo.: Rates on hogs, in single-deck cars, from, to Oklahoma City, Okla., found unreasonable to extent they exceeded rates from Kansas City, Mo.-Kans., prescribed in *Wilson & Co.*, 62 I. C. C., 171. Reasonable rates prescribed and reparation awarded. *Morris & Co. v. Director General, as Agent*, 282.

Salt Lake City, Ogden, and Provo, Utah: Rates on refined gasoline from the midcontinent field, Colorado, Wyoming, and California, to, found unreasonable in that it compares unfavorably with the rate to Denver, Colo., Cheyenne, Wyo., and other Colorado common points. Reasonable rates prescribed. *Utah State Automobile Asso. v. A., T. & S. F. Ry. Co.*, 8.

Springfield, Ill.: Sixth-class rate on steel rails from St. Louis, Mo., to, found unreasonable to extent it exceeded lower commodity rate contemporaneously in effect from St. Louis to points north of Springfield, from St. Louis to Chicago, Ill., and from St. Louis to Springfield via routes other than route of movement. Reasonable maximum rate prescribed and reparation awarded. *Midcontinent Equipment & Machinery Co. v. C. & A. R. R. Co.*, 151.

Springfield, Ill., district: Charges on bituminous coal from Citizens mines A and B located outside city limits but in the Springfield, Ill., district, to intrastate and interstate points during federal control, assessed on the basis of the rate to Springfield, plus the Springfield district rates beyond, found not unreasonable as compared with rates from other mines within that district which took the Springfield district basis of rates. *Citizens Coal Mining Co. v. Director General, as Agent*, 271.

Terre Haute, Ind.: Rate on bar iron and steel from, to Seattle, Wash., for export, found not unreasonable as compared with lower rate maintained from Chicago, Ill. *Mitsui & Co. (Ltd.) v. Director General, as Agent*, 269.

Williams, Okla.: Rates on coal from, to Kansas City, Mo., found unreasonable to extent they exceeded lower rate contemporaneously in effect from certain Arkansas mines. Reparation awarded. *Midland Coal Co. v. M. V. R. R. Co.*, 588.

## REPAIRS.

Upon the resumption of corporate control and operation, the Pennsylvania R. R. Co. awarded to the Baldwin Locomotive Works a contract for the repair of 200 locomotives, while maintaining shops on its own line for such work. Upon investigation, the cost to respondent was over \$3,000,000 in excess of the cost at which the work might have been done in its own shops, and included work paid for twice in some instances. Such work could have been done in respondent's own shops within a reasonable time by an appropriate coordination of efforts and reasonable added exertion. Construction and Repair of Ry. Equipment: Penn. R. R. Co., 694.

Contracts negotiated by the Atlantic Coast Line R. R. Co. in 1920 for the repair of 30 of its locomotives by the Baldwin Locomotive Works, although based upon excessive costs, not found, in the circumstances disclosed, to have been unwarranted. Construction and Repair of Ry. Equipment: A. C. L. R. R. Co., 727.

Under contracts negotiated in 1920 with certain locomotive construction companies, 195 locomotives of the New York Central R. R. were sent to contract shops for classified repairs. Upon investigation the cost to respondent was in the neighborhood of \$3,000,000 in excess of the cost of similar work in its own shops, and such respondent could have repaired at least the greater number of the locomotives in its own shops within the time in which the contract work was done. Construction and Repair of Ry. Equipment: N. Y. C. R. R. Co., 732.

REPARATION. *See* DAMAGES.

## RES ADJUDICATA.

Relief sought has been afforded in another decision heretofore rendered.

*Held:* Since there is no issue before the Commission complaint dismissed. *Beaumont Chamber of Commerce v. A. & W. Ry. Co.*, 544.

## RESHIPMENT.

Applying increases under general order No. 28 of the Director General to each factor of combination rates on smithing coal moving in bulk to St. Louis, Mo., there sacked and forwarded to destinations in western territory, while applying but a single increase to the through rates on such coal when moving through in bulk, found not unreasonable. Combination clauses under that order relate specifically to through continuous movements, while the coal sacked by complainant moves into and out of its yards in distinct and separate movements. *Romann & Bush Pig Iron & Coke Co. v. Director General*, as Agent, 147.

## RESTORED RATES.

Increases applied under *Increased Rates*, 1920, 58 I. C. C., 220, on lumber and forest products from various states south of the Ohio River to c. f. a. and other defined territories, disturbed the relationship formerly existing between northern and southern producing points to common markets, and attributed to a general depression in the lumber industry. Rates as so increased found unreasonable for the future and reasonable basis bearing a closer relationship to that which existed prior to the increases prescribed. *Southern Hardwood Traffic Asso. v. I. C. R. R. Co.*, 68.

66 I. C. C.

## RESTORED RATES—Continued.

Rates on corn and oats were increased under general order No. 28 of the Director General to the wheat rate basis, while from and to other points in the same general territory such rates were increased but 25 per cent, not exceeding 6 cents, thereby disturbing the level of rates which had existed for a number of years. Subsequently rate parity restored by application of increases under that order without regard to the wheat rates. Rates charged during interim found unreasonable and reparation awarded. *Flanley Grain v. Director General, as Agent, 126.*

Commodity rates on tapioca, tapioca flour, and cassava flour, in packages, were the same. Commodity rate on tapioca canceled, leaving in effect higher class rate. Subsequently commodity rate reestablished on tapioca, which restored the parity formerly existing. Rates charged on shipments moving during interim found unreasonable and reparation awarded. *Minute Tapioca Co. v. Director General, as Agent, 267.*

Adjustment, under which cement mills within the Kansas gas belt, including Dewey, Okla., had the benefit of the same rate to points in Kansas, was disturbed by establishment of distance rates from Dewey, while from the other gas belt producing points in Kansas to destinations in the same state higher group rates were continued in effect. Subsequently previously existing grouping restored. *Held: Higher rates charged on intrastate shipments moving during federal control found not unreasonable. Iola Cement Mills Traffic Asso. v. Director General, as Agent, 495.*

Due to the application of increases under general order No. 28 of the Director General the differential relationship of rates on bituminous coal from group mines in Indiana and Illinois to Chicago, Ill., disrupted. Subsequently preexisting relationship restored. *Held: Failure to observe the terms of that order filed with the Commission by the President through his duly appointed agent does not prove that the rates established thereunder were unreasonable. Carney v. Director General, as Agent, 671.*

## RESTRICTED RATES.

Proposal to eliminate certain stations on the Denver & Rio Grande Western, a narrow gauge line, from the application of group rates applicable between Pacific coast points and points in Colorado and New Mexico, and to definitely restrict such rates to Colorado common points and Santa Fe, N. Mex., which will effect no change in rates but merely clarify the tariffs—a commendable thing, found justified. Nonapplication of Group-J Rates, 96.

Proposed schedules by which the application of through rates on coal from mines on the Western Maryland in connection with the B. & O., to eastern destinations would be restricted to the route via Cumberland, Md., filed against the express wishes of the originating carrier and which would operate to deprive it of its long haul, found not justified. Routing on Coal from Western Maryland Ry. Mines, 103.

Class rates found unreasonable to extent they exceeded lower commodity rate in effect between the same points but which were restricted in error to apply via more circuitous routes, which restriction was subsequently removed. Reparation awarded. *Standard Oil Co. (Ky.) v. Director General, as Agent, 274.*

## RETURNED EMPTIES.

Charges at l. c. l. rates on such shipments in barrels, based on actual weight, assessed for the return transportation in tank cars of sulphuric acid sediment or sludge of no commercial value, found unreasonable. Carrier subsequently established a rule under which no charge would be made if the remaining substance is without commercial value and there is no recovery, nor commercial consideration given to the substance by the shipper or consignee. Reparation awarded. *Tennessee Copper Co. v. Director General*, as Agent, 238.

Standard box charges assessed on returned empty field boxes, the dimensions of which were smaller than those of the standard box, found not unreasonable. Such a result inevitably follows where rates are stated in amounts per package and the shipper chooses to use a package smaller than the standard prescribed by the tariff. *Florida Citrus Exchange v. Director General*, as Agent, 307.

## RETURN ON INVESTMENT.

The group plan of increasing rates followed in *Increased Rates*, 1920, 58 I. C. C., 220, necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned and due regard for the public interest demands that the Commission give these fortuitous inequalities consideration in the fixing of divisions. *New England Divisions*, 196 (199).

Complaint praying for the issuance of an order under paragraph (21) of section 1 of the act requiring the C., B. & Q. R. R. Co. to extend its line from Ericson to Chambers, Nebr.; *Held*: Proposed extension is not reasonably required in the interest of public convenience and necessity and the issuance of the order prayed for would require defendant to invest a large sum of money in an undertaking which at the outset would not be a financial success, and would not hold out hope for the future. *Cooke v. C., B. & Q. R. R. Co.*, 452.

## REVENUE. See EARNINGS.

## REVERSAL.

Upon supplemental report, *Held*: In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, findings in 61 I. C. C., 132 and 145, wherein carriers' participation in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on their own rails was found to result in undue prejudice, reversed. *American Creosoting Co. v. Director General*, 54; *Southern Hardwood Traffic Asso. v. Director General*, 67.

Upon further hearing, rates on coal from Dawson, N. Mex., to Clarkdale and Jerome, Ariz., found unreasonable as compared with rates prescribed in *Arizona Corp. Commission*, 28 I. C. C., 428, from Gallup, N. Mex., to various Arizona points. Finding in original report, 57 I. C. C., 300, reversed; reasonable rates prescribed and reparation awarded. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.*, 377.

## RIVER CROSSINGS. See BRIDGES.

66 I. C. C.



## ROUTES.

Class rates found unreasonable to extent they exceeded lower commodity rate in effect between the same points, but which were restricted in error to apply via more circuitous routes, which restriction was subsequently removed. Reparation awarded. *Standard Oil Co. (Ky.) v. Director General, as Agent*, 274.

Rate and route specified in bill of lading but no junction point. Originating and delivering carriers both reached origin and destination points. Lower rate applied when entire haul performed by delivering carrier. Contention that originating line should have turned shipment over to delivering carrier at point of origin not sustained and shipments not misrouted as routing instructions plainly indicated a line haul by the originating carrier. *Standard Asphalt & Refining Co. v. Director General, as Agent*, 295.

Combination rate on canned tomatoes from Greenwich, N. J., to pier 28, New York, N. Y., found not unreasonable as compared with lower rate which could have been obtained by specifying Central delivery, which delivery could have been used without inconvenience or disadvantage, or with rate to Wallabout station, a Pennsylvania delivery in Brooklyn, N. Y. *Williams & Co. v. Director General, as Agent*, 305.

Misrouting found to result where shipments were delivered to originating carrier unrouted and shipper was not given the benefit of the cheapest available and reasonable route to which he was entitled. *Carney v. Director General, as Agent*, 560.

Different rates were in effect over two routes between the same points. Routes practically the same in length and subject to the same transportation conditions. *Held*: In view of the fact that carriers were operated under a unified and coordinated national control, and not in competition, it was unreasonable for the Director General to maintain a higher rate over one route than contemporaneously applied over the other. *American Agricultural Chemical Co. v. Director General, as Agent*, 650.

## ROUTING INSTRUCTIONS.

On shipments moving prior to federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of a rival line to which shipper might have delivered the shipment had he so elected. *Held*: Following *McLean Lumber Co.*, 22 I. C. C., 349, receiving carrier may forward shipment over its line at the rate lawfully applicable, it not being obligated to turn the traffic over to its competitor. Former report, 61 I. C. C., 659, modified and shipments found not misrouted. *Mulkey Salt Co. v. Director General, as Agent*, 441.

On shipments moving during federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of another line to which shipper might have delivered the shipment had he so elected. *Held*: Shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under a unified and coordinated national control and not in competition." *Id.* (441).

Where for all practical purposes the routing instructions given by shipper are complete, and shipments move in accordance therewith, no misrouting results. *National Supply Co. v. C., B. & Q. R. R. Co.*, 604 (605).

66 I. C. C.

## RULES OF PRACTICE.

Upon petition for modification of the Commission's report in 64 I. C. C., 357, service of which was made in compliance with Rule XV of the Rules of Practice, and to which no objections have been raised, rules and regulations prescribing forms of uniform domestic bill of lading and live-stock contract so as to eliminate doubt as to the liability of the consignee for charges and remove any opportunity for confusion, approved. Domestic Bill of Lading and Live Stock contract, 63.

In complying with Rule V of the Commission's Rules of Practice, complainants authorized to submit proof in the form of affidavits that freight charges were paid and borne by them. Carriers do not object to this form of proof. *Boston Chamber of Commerce v. Director General*, as Agent, 142 (144).

## SAUR-COVERSTON FORMULA.

For determination of terminal costs of handling traffic, described. *Clinton Paving Brick Co. v. Director General*, as Agent, 328 (344-345).

SCALE OF RATES. *See* DISTANCE RATES.

## SCALES.

Carriers should not be required to accept weights ascertained by shippers on private scales. *Providence Fruit & Produce Exchange v. Director General*, as Agent, 300 (301).

SCALE WEIGHT. *See* WEIGHT.

## SECONDHAND ARTICLES.

Official and western classification ratings of third class on old printer's rollers and printer's roller cores found not unreasonable as compared with ratings of fourth class in Illinois and Iowa classifications, or as compared with fourth-class ratings on other commodities which from a classification standpoint are not analogous to printer's rollers or cores. *Chicago Roller Co. v. Director General*, as Agent, 657.

## SECTION 1.

The positive duty of carriers under, goes no farther than to provide such facilities as are reasonably sufficient for the business at particular points. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44 (49).

Of the interstate commerce act, as amended by the transportation act, 1920, carries the Commission's territorial jurisdiction up to the international boundary line, at which that of Congress itself halts, and as to foreign commerce is thus coextensive with that of the federal government. No act of Congress has force of law beyond that boundary line, but up to it, as everywhere else within the United States, the interstate commerce act has full effect just as the federal control act had effect when these shipments moved. *International Nickel Co. v. Director General*, as Agent, 627 (629).

SECTION 2. *See* DISCRIMINATION.SECTION 3. *See* PREFERENCES AND PREJUDICES.SECTION 4. *See* LONG AND SHORT HAUL; TARIFF CIRCULAR 18-A; THROUGH AND LOCAL.

## SECTION 6.

Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point and the publication by the inbound carrier of a tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justified in relying upon the lower basis of rates thus offered. Reparation awarded. *Brenner Lumber Co. v. Director General*, as Agent, 595.

## SECTION 15.

Refusal of carriers to unload ordinary live stock from their cars into stock pens adjacent to packing plants of complainants, or to make an allowance for unloading such shipments, while, pursuant to section 15, paragraph (5) of the act, performing the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge in addition to line-haul charges, not shown to violate the act. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44.

Section 15, paragraph (5) is definitely limited, both as to initial loading and as to final unloading, to public stockyards. It does not apply to initial loading at other than public stockyards even for shipment to such yards. *Id.* (49).

Both the legislative history and the provisions of the transportation act, 1920, make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the nation, and the principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest. Upon this foundation rests the provision of section 15 of the interstate commerce act with respect to divisions. *New England Divisions*, 196 (198).

Contention that the right of a shipper to receive an allowance for services rendered in connection with the transportation of property owned by him is not limited by section 15 of the act to those services which the carrier can perform, or can be required to perform, under its contract of transportation, *Held*: In the absence of undue prejudice a carrier can not be required to compensate a shipper for services that it is not the duty of the carrier to perform, or for services which, because of conditions at the shipper's plant, it can not reasonably be required to perform. *Gulf States Steel Co. v. Director General*, as Agent, 255 (258).

Contention that under section 15, paragraph (4), of the act the Commission can not require a carrier to continue to participate in through routes and joint rates on ground that it will secure greater revenue out of longer hauls via other routes, not sustained. Contention overlooks fact that the primary question is the justification of increased rates which will result. Furthermore, the showing made would justify the establishment of through routes and joint rates via such point in the first instance. *Rate Cancellation from Indiana to Ohio*, 449 (450-451).

## SHIP SIDE DELIVERY.

Because of an accumulation of barges alongside vessel, delivery from car float to vessel could not be made. Cars were floated to float bridge adjacent to pier and thence moved along tracks and out upon the pier for delivery, for which service a class rate was assessed. *Held*: Extra movement to float bridge and beyond amounted to a reconsignment. Charges assessed found unreasonable to extent they exceeded those provided in a local switching tariff for similar movements to cold-storage warehouses, plus a reconsignment charge. Reparation awarded. *Armour & Co. v. Director General*, as Agent, 760.

SHORTAGE OF CARS. *See* CAR SHORTAGE.

## SHORT HAULING.

Proposed schedules by which the application of through rates on coal from mines on the Western Maryland in connection with the B. & O., to eastern destinations would be restricted to the route via Cumberland, Md., filed against the express wishes of the originating carrier and which would operate to deprive it of its long haul, found not justified. *Routing on Coal from Western Maryland Ry. Mines*, 103.

If a carrier has traffic in its possession, it should be allowed to handle it by its own line as far as it can unless the public interest would suffer thereby. *Id.* (108).

Contention that under section 15, paragraph (4) of the act the Commission can not require a carrier to continue to participate in through routes and joint rates on ground that it will secure greater revenue out of longer hauls via other routes, not sustained. Contention overlooks fact that the primary question is the justification of increased rates which will result. Furthermore, the showing made would justify the establishment of through routes and joint rates in the first instance. Rate Cancellation from Indiana to Ohio, 449 (450-451).

## SHORT HAUL TRAFFIC.

Increased charges initiated by the Director General under general order No. 28 and assessed on stone moving during federal control from points in the Indiana limestone district to various destinations found unreasonable to extent that charges for preliminary services from quarries to mills and similar movements, exceeded charges subsequently established. Reparation awarded. *Bedford Cut Stone Co. v. Director General*, as Agent, 26.

Rates on mine-run bituminous coal from certain mines in the Clinton and Brazil districts in Indiana to complainants' plants at Clinton, Locan, Mount Silica, and Brazil, Ind., during federal control, found unreasonable and reparation awarded. *Clinton Paving Brick Co. v. Director General*, as Agent, 338.

Class rate on imported nitrate of soda from Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, during federal control, found unreasonable to extent it exceeded lower commodity rate subsequently established after request therefor made. *Barrett Co. v. Director General*, as Agent, 381.

Rates on fresh meat moving from freezer at Jersey City, N. J., to complainant's plant at the same point, found unreasonable as compared with switching charges at the same and other points, but in view of the complex movement involved rates charged were unreasonable to the extent they exceeded \$15 per car. Reparation awarded. *Armour & Co. v. D., L. & W. R. R. Co.*, 445.

## SHORT LINES.

Beaver Valley R. R. found to be a common carrier subject to the act. *Beaver Sand Co. v. Director General*, as Agent, 285 (287).

The size of a road does not determine whether or not it is a common carrier. *Id.* (287).

## SHORT LINES—Continued.

Upon supplemental report, intrastate rates and charges of certain short-line steam railroads, required by state authority to be maintained within Illinois, lower than the corresponding interstate rates and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate shippers and localities, unduly prejudicial to interstate shippers and localities, and unjustly discriminatory against interstate commerce. Previous reports, 59 I. C. C., 350, and 60 I. C. C., 92. Intrastate Rates Within Illinois, 350.

Fore River R. R. Corporation found to be a common carrier subject to the act. *Massachusetts Oil Refining Co. v. B. & A. R. R. Co.*, 535 (543).

## SPACE RENTAL.

Proposed increased "space rental" charges on domestic, export, and coastwise shipments of cotton and cotton linters at New Orleans, La., and subports, found not justified as the general level of charges on all commodities handled in domestic, export, import, or coastwise traffic is not only lower than the level of the charges proposed, but is lower than the level of the present charges. Space Rental Charges on Cotton, 121.

"Space rental" charges found, in fact, to be charges for storage, and ambiguities in tariffs giving color to a distinction between charges for "storage" and charges for "space rental" should be eliminated. *Id.* (123).

## SPORADIC MOVEMENT.

Class rate on sporadic shipment of roasted zinc ore from Canton, Ohio, to Terre Haute, Ind., found not unreasonable as compared with lower commodity rate subsequently established. Such lower rate is much lower than commodity rates on zinc ore found not unreasonable in *Illinois Zinc Co.*, 61 I. C. C., 92. *Grasselli Chemical Co. v. Director General*, as Agent, 263.

Combination rates to and from Rivesville Junction, W. Va., on bituminous coal moving from Hood mine, South Rivesville, W. Va., to destinations in New York and New Jersey, found not unreasonable due to the factor from the mine to the junction point. No other shipments have moved over these routes, no request has ever been made for a specific rate from the mine to the junction and no future movement is contemplated. *Fairmont & Cleveland Coal Co. v. Director General*, as Agent, 293.

While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. The maintenance of a rate that is too high may be one of the causes of which a light movement is the effect. *United Verde Extension Mining Co. v. U. V. & P. Ry. Co.*, 377 (379).

Combination through rate on bauxite ore from Republic, Ga., to Chicago Heights, Ill., found not unreasonable because of the subsequent reduction of the factor from Ohio River crossings. Few shipments have been made from and to these points and no movement in the near future is contemplated. *General Chemical Co. v. Director General*, as Agent, 443.

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## SPOTTING CARS.

Failure of defendants to move inbound and outbound cars between interchange tracks and points within complainants' plants under the line-haul rates or to compensate complainants therefor, found not to result in unreasonable, discriminatory, or unduly prejudicial charges. Complainants would not accept placement within their plants at defendants' convenience; the practice has been to deliver and receive the traffic at the interchange tracks; and complainants are accorded the same treatment as their competitors in the same district. *Gulf States Steel Co. v. Director General*, as Agent, 255.

Prior to the increases the line haul rates did not cover the movement of cars by defendants between the interchange tracks and spotting points within plants. Contention that this was under an agreement that complainants should make these movements at their own expense because of the low basis of rates accorded them, and that the successive increases made under general order No. 28 and *Increased Rates, 1920*, 58 I. C. C., 220, have made the rates so high that defendants should therefore render the service, *Held*: This position is untenable. *Id.* (257).

## SPREAD OF RATES.

Proposal to cancel the l. c. l. commodity rates on iron and steel articles from Boston, Mass., and other points to destinations on the Maine Central, thereby making applicable higher class rates, found not justified. Proposed rates would result in violations of the fourth section of the act and would widen the disparity in rates already existing between Boston and competing points. *Iron and Steel Articles from Boston*, 100.

Rate on pig iron from Pottstown, Pa., to San Francisco, Calif., for export, found not unreasonable or unduly prejudicial because the spread in the rates on that article and manufactured iron and steel articles exceeded 5 cents, the basis subsequently established. *Shibakawa & Co. (Inc.) v. P. & R. Ry. Co.*, 261.

Proposed reductions in rates on coal from mines in the Springfield, Ill., district served by the Chicago & Alton, and from mines in the southwestern field located in Missouri, Kansas, Oklahoma, and Arkansas to Kansas City, Mo.-Kans., and intermediate points, found not justified. Such reduced rates without corresponding reductions to St. Joseph, Mo., and Omaha, Nebr., would widen the spread in rates existing between these points and would result in undue preference to Kansas City and in undue prejudice to St. Joseph and Omaha. *Reduced Rates on Coal to Kansas City, Mo.*, 457.

Proposed increased rate on window glass from Kansas and Oklahoma points to Sioux Falls, S. Dak., which would disturb the long-standing spread between the rates to Sioux Falls and practically every other related point, found not justified. *Window Glass from Kansas and Oklahoma to Sioux Falls*, 757.

STANDARD TIME. *See TIME.*

## STATE AND INTERSTATE.

Class rates from Corinth, Miss., to points in Tennessee between Corinth, and Jackson, Tenn., found unreasonable and unduly prejudicial to Corinth and its shippers, as compared with class rates to the same points from Jackson. Reasonable maximum distance rates prescribed. *Corinth Grocery Co. v. M. & O. R. R. Co.*, 320.

## STATE AND INTERSTATE—Continued.

Upon supplemental report, intrastate rates and charges of certain electric lines and certain short-line steam railroads, required by state authority to be maintained within Illinois, lower than the corresponding interstate rates and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate shippers and localities, unduly prejudicial to interstate shippers and localities, and unjustly discriminatory against interstate commerce. Previous reports, 59 I. C. C., 350, and 60 I. C. C., 92. *Intrastate Rates Within Illinois*, 350.

Upon supplemental report, orders entered in 58 I. C. C. 610 and 63 I. C. C. 288, prescribing reasonable rates between Natchez and Vicksburg, Miss., and points in western Louisiana for the removal of undue prejudice and undue preference in favor of western Louisiana points, vacated. The unlawful situation which resulted in the issuance of those orders does not now exist and will not be restored, and there is no real necessity for their further continuance. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 386.

Contention that, after undue prejudice against interstate commerce has been removed by compliance with the Commission's order, the action of state authorities in approving the rates prescribed deprives the Commission of jurisdiction to require the continuance of the nonprejudicial adjustment, not sustained. *Id.* (388).

A shipment moved between two points in the same city is not interstate in character, unless in some way connected with an interstate movement. *Armour & Co. v. D., L. & W. R. R. Co.*, 445 (447).

Adjustment, under which cement mills within the Kansas gas belt, including Dewey, Okla., had the benefit of the same rate to points in Kansas, was disturbed by establishment of distance rates from Dewey, while from the other gas belt producing points in Kansas to destinations in the same state higher group rates were continued in effect. Subsequently previously existing grouping restored. *Held*: Higher rates charged on intrastate shipments moving during Federal control found not unreasonable. *Iola Cement Mills Traffic Asso. v. Director General*, as Agent, 495.

## STATE COMMISSIONS.

Contention that, after undue prejudice against interstate commerce had been removed by compliance with the Commission's order, the action of state authorities in approving the rates prescribed deprives the Commission of jurisdiction to require the continuance of the nonprejudicial adjustment, not sustained. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 386 (388).

STATE RATES. *See also* STATE AND INTERSTATE.

Rates on petroleum products and other commodities, c. l. and l. c. l., between Shamrock and certain other points in Oklahoma, during federal control, found unreasonable to extent that the rates on traffic interchanged between the Sapulpa & Oil Field and Frisco railroads exceeded the single-line distance rates applicable in Oklahoma, and on traffic moving over those lines and the lines of other carriers, to extent they exceeded the single line rates plus two line arbitraries. Reparation awarded. *Cosden & Co. v. Director General*, as Agent, 113.

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## STATE RATES—Continued.

Minimum weight of 40,000 pounds for each car used, applicable on fir piling, in triple carloads, from Kulshan to Bellingham, Wash., during federal control, found unreasonable to extent it exceeded minimum of 33,000 pounds subsequently established, and subject to a minimum charge of \$15 per car. Reparation awarded. *Ambrose v. Director General*, as Agent, 153.

Increases under general order No. 28 of Director General on bituminous coal from Linton group in southwestern Indiana to destinations north-east of Indianapolis, Ind., during federal control, resulted in widening the differential to such points over Indianapolis which existed prior to such increases. Subsequently rates reduced but former differential not restored. *Held*: Neither Director General's departure from terms of his general orders nor the subsequent reduction of rates is necessarily proof that rates were unreasonable. *Union Traction Co. of Indiana v. Director General*, as Agent, 157.

Where carrier was not under federal control, its absorption provisions on intrastate traffic were not subject to the Commission's jurisdiction during the federal control period. *Citizens Coal Mining Co. v. Director General*, as Agent, 271 (273).

Class rates on sulphuric acid, in tank-car loads, from Charlotte, N. C., to Greensboro, N. C., during federal control, found unreasonable to extent they exceeded lower commodity rates subsequently established, request therefor having been made before shipments moved. Reparation awarded. *American Agricultural Chemical Co. v. Director General*, as Agent, 277.

Class rates on mixed or nitrating acid, in tank-car loads, from Hopatcong and Haskell, N. J., to Arlington, N. J., during federal control, found unreasonable to extent they exceeded lower commodity rates to North Newark, N. J., which lower rates could have been applied from Hopatcong and Haskell under Rule 77 of Tariff Circular 18-A. Reparation awarded. *Du Pont de Nemours & Co. v. Director General*, as Agent, 291.

Standard box charges collected on citrus fruit, in field boxes, and on returned empty field boxes, the dimensions of which were smaller than those of the standard box, moved intrastate in Florida during federal control, found not unreasonable. The mere fact that complainant was charged more for hauling a like quantity of fruit than were the users of standard containers does not entitle it to reparation. Such a result inevitably follows where rates are stated in amounts per package and the shipper chooses to use a package smaller than the standard prescribed by the tariff. *Florida Citrus Exchange v. Director General*, as Agent, 307.

Rates on mine-run bituminous coal from certain mines in the Clinton and Brazil districts in Indiana, to complainants' plants at Clinton, Locan, Mount Silica, and Brazil, Ind., during federal control, found unreasonable and reparation awarded. *Clinton Paving Brick Co. v. Director General*, as Agent, 338.

Class rate on imported nitrate of soda from Port Richmond, Philadelphia, Pa., to Frankford, Philadelphia, during federal control, found unreasonable to extent it exceeded lower commodity rate subsequently established after request therefor made. *Barrett Co. v. Director General*, as Agent, 381.



## STATE RATES—Continued.

Rates on fresh meat moving from freezer at Jersey City, N. J., to complainant's plant at the same point, found unreasonable as compared with switching charges at the same and other points: but in view of the complex movement involved rates charged were unreasonable to extent they exceeded \$15 per car. Reparation awarded. *Armour & Co. v. D., L. & W. R. R. Co.*, 445.

Minnesota intrastate rates on anthracite coal not shown to have been an appropriate measure of the rates on coke from St. Paul, Minn., to Minnesota points during the period of federal control. The loading is materially less on coke than on anthracite coal and the car-earnings are less, even when the rate per ton is materially higher. *Minnesota By-Product Coke Co. v. Director General*, as Agent, 480 (488-489).

Adjustment, under which cement mills within the Kansas gas belt including Dewey, Okla., had the benefit of the same rate to points in Kansas, was disturbed by establishment of distance rates from Dewey, while from the other gas-belt producing points in Kansas to destinations in the same state, higher group rates were continued in effect. Subsequently previously existing grouping restored. *Held*: Higher rates charged on intrastate shipments moving during federal control found not unreasonable. *Iola Cement Mills Traffic Asso. v. Director General*, as Agent, 495.

Rates on fertilizer, in bags, from Cleveland to Minford, Ohio, during federal control found unreasonable as compared with lower rate maintained in the opposite direction, which lower rate was subsequently established via route of movement. Reparation awarded. *Swift & Co. v. Director General*, as Agent, 615.

Rates on bituminous coal from mines in the Springfield district, and in the Peoria and Fulton county groups, in Illinois, to Peoria, Ill., during federal control, found not unreasonable, as they compare favorably with numerous rates on coal for comparable distances between points in the same territory, and the fact that such rates were not established in strict conformity with the provisions of general order No. 28 of the Director General is insufficient in itself to support a finding of unreasonableness. *Central Illinois Light Co. v. Director General*, as Agent, 623.

Rates charged on intrastate shipments of box board moving during federal control found legally applicable and not unreasonable as provision published in exceptions and tariff naming class rates charged provided that "no rate shall be applied on traffic moving under class rates lower than amount for the respective classes, and the minimum shall be the rate for the class at which that article is rated in the classification applying in the territory where the shipments move." *Ft. Wayne Corrugated Paper Co. v. Director General*, as Agent, 669.

STATUTE OF LIMITATIONS. *See* LIMITATION OF ACTION.

## STOCKYARDS.

Refusal of carriers to unload ordinary live stock from their cars into stock pens adjacent to packing plants of complainants, or to make an allowance for unloading such shipments, while, pursuant to section 15, paragraph (5), of the act, performing the service of loading at point of origin or unloading at destination such live stock shipped from or to public stockyards, without charge in addition to line-haul charges, not shown to violate the act. *Omaha Packing Co. v. A., T. & S. F. Ry. Co.*, 44. Charges in addition to the line-haul charges, for unloading and reloading en route ordinary live stock destined to private stockyards adjacent to packing plants of complainants, while unloading and reloading such shipments destined to public stockyards, without charge in addition to line-haul charges, found to result in undue prejudice to complainant in favor of competitors whose packing plants are adjacent to public stockyards. *Id.* (44).

Section 15, paragraph (5), is definitely limited, both as to initial loading and as to final unloading, to public stockyards. It does not apply to initial loading at other than public stockyards even for shipment to such yards. *Id.* (49).

The Commission must assume that Congress legislated on the subject of the duties of common carriers by railroad concerning the receipt and delivery of live stock with full knowledge of the law as declared by the Supreme Court in *Covington Stock-Yards Co. v. Keith*, 139 U. S., 128, and therefore with the knowledge and purpose that public stockyards would be open to all shippers and consignees as the terminals of the carriers. *Id.* (51).

## STOPPAGE IN TRANSITU.

Proposed rule under which shipper is required to execute agreement for stoppage of goods in transitu, and where shipper is unknown or irresponsible, the agent must require one or more sureties to sign with him, found not justified. Such rule indefinite as to number of sureties required, reposes too much arbitrary power in agents to decide who is or is not "responsible," compliance therewith might require considerable time and result in loss of right to stop, because of delivery at destination, and terms of agreement are inconsistent with recognition by respondent of any duty to obey the order to stop. *Stoppage of Goods in Transit*, 423.

The right of, exists independent of statute and can not be added to or curtailed by anything in the carrier's tariffs. *Id.* (424).

STORAGE. *See also* TRACK STORAGE.

Proposed increased "space rental" charges on domestic, export, and coastwise shipments of cotton and cotton linters at New Orleans, La., and subports, found not justified as the general level of charges on all commodities handled in domestic, export, import, or coastwise traffic is not only lower than the level of the charges proposed, but is lower than the level of the present charges. *Space Rental Charges on Cotton*, 121.

"Space rental" charges found, in fact, to be charges for storage, and ambiguities in tariffs giving color to a distinction between charges for "storage" and charges for "space rental" should be eliminated. *Id.* (123).

The furnishing of, is not a primary function of the railroads. *American Wholesale Lumber Assn. v. Director General, as Agent*, 393 (407).

STORAGE IN TRANSIT. *See* TRANSIT ARRANGEMENTS.

## STRIKES.

On account of various strikes embargoes were placed against certain points. Demurrage charges assessed on shipments on which reconsignment to such points refused, found illegal as applicable tariff contained no provision prohibiting reconsignment to embargoed points. Reparation awarded. *Schaefer v. L. V. R. R. Co.*, 549.

Because of an accumulation of barges alongside vessel, resulting from a longshoremen's strike, delivery from car float to vessel could not be made. Cars were floated to float bridge, adjacent to pier, and thence moved along tracks and out upon the pier for delivery, for which service a class rate was assessed. *Held*: Extra movement to float bridge and beyond amounted to a reconsignment. Charges assessed found unreasonable to extent they exceeded those provided in a local switching tariff for similar movements to cold storage warehouses, plus a reconsignment charge. Reparation awarded. *Armour & Co. v. Director General*, as Agent, 760.

**SUBSEQUENTLY ESTABLISHED RATES.** *See* REDUCTION IN RATES (BY CARRIERS).

## SUBSIDIARY.

The fact that one company may be a subsidiary of another does not *ipso facto* entitle the latter to bring an action in its own name for a damage suffered by the former. *American Agricultural Chemical Co. v. Director General*, as Agent, 650 (651).

**SUITS.** *See* ACTIONS.

**SUPPLEMENTAL REPORT.** *See also* FURTHER HEARING; REARGUMENT.

Upon supplemental report, *Held*: In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, findings in 61 I. C. C., 132 and 145, wherein carriers' participation in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on their own rails was found to result in undue prejudice, reversed. *American Creosoting Co. v. Director General*, 54; *Southern Hardwood Traffic Asso. v. Director General*, 67.

Upon supplemental report, intrastate rates and charges of certain electric lines and certain short-line steam railroads, required by state authority to be maintained within Illinois, lower than the corresponding interstate rates and charges authorized in *Increased Rates, 1920*, 58 I. C. C., 220, found unduly preferential of intrastate shippers and localities, unduly prejudicial to interstate shippers and localities, and unjustly discriminatory against interstate commerce. Previous reports, 59 I. C. C., 350, and 60 I. C. C., 92. *Intrastate Rates Within Illinois*, 350.

Upon supplemental report, orders entered in 58 I. C. C., 610, and 63 I. C. C., 288, prescribing reasonable rates between Natchez and Vicksburg, Miss., and points in western Louisiana for the removal of undue prejudice and undue preference in favor of western Louisiana points, vacated. The unlawful situation which resulted in the issuance of those orders does not now exist and will not be restored and there is no real necessity for their further continuance. *Natchez Chamber of Commerce v. L. & A. Ry. Co.*, 386.

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## SUPPLEMENTAL REPORT—Continued.

On shipments moving prior to federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of a rival line to which shipper might have delivered the shipment had he so elected. *Held*: Following *McLean Lumber Co.*, 22 I. C. C., 349, receiving carrier may forward shipment over its line at the rate lawfully applicable, it not being obligated to turn the traffic over to its competitor. Former report, 61 I. C. C., 659, modified and shipments found not misrouted. *Mulkey Salt Co. v. Director General*, as Agent, 441. Upon supplemental report, orders defining limits of United States standard Eastern and Central time zones, 51 I. C. C., 273, and 53 I. C. C., 208, modified so as to include Toledo, Ohio, within the standard Eastern time zone. Standard Time Zone Investigation, 566.

SWITCHING. *See also* SPOTTING CARS.

Shipments were handled under regular billing, in trains subject to orders of train dispatchers, and the movement performed necessitated the crossing of one or more river bridges and considerable switching and back hauling. Point involved is not shown in governing tariffs as a point within the switching limits and rate from and to that point is published as a transportation charge. *Held*: Service found to be a line haul and not a switching movement. *Hill & Bauer v. Director General*, as Agent, 279 (280).

Aggregate charges on dried fruits from Fresno and other California points to Tacoma, Wash., composed of applicable joint rates of line haul carriers plus switching charge to complainant's warehouses, located on an industry track, found not unreasonable or discriminatory. Aggregate charges were less than the combinations to and from Portland, Oreg., and compare favorably with rates on the same commodity between other points in the same general territory for less distances. *West Coast Grocery Co. v. Director General*, as Agent, 679.

Collection at transit point of switching charges of a belt line which delivered shipments to complainant for storage and to outbound carriers for movement to final destination, and which were in addition to the through rate and transit charges, found illegal. Shipments which move from a point of origin to final destination under transit arrangements are regarded as moving under a single continuous contract of carriage. Reparation awarded. *Capital Warehouse Co. v. Director General*, as Agent, 683.

Because of accumulation of barges alongside vessel, delivery from car float to vessel could not be made. Cars were floated to float bridge adjacent to pier and thence moved along tracks and out upon the pier for delivery, for which service a class rate was assessed. *Held*: Extra movement to float bridge and beyond amounted to a reconsignment. Charges assessed found unreasonable to extent they exceeded those provided in a local switching tariff for similar movements to cold storage warehouses, plus a reconsignment charge. Reparation awarded. *Armour & Co. v. Director General*, as Agent, 760.

## SWITCHING DISTRICT.

Charges on bituminous coal from Citizens mines A and B located outside the city limits but in the Springfield, Ill., district, to intrastate and interstate points during federal control, assessed on the basis of the rate to Springfield, plus the Springfield district rates beyond, found not unreasonable as compared with rates from other mines within that district which took the Springfield district basis of rates. *Citizens Coal Mining Co. v. Director General*, as Agent, 271.

Charges applicable on scrap iron between points within the switching limits of Cincinnati, Ohio, and Andrews, Ky., composed of a switching charge, and a line haul charge with minimum and maximum of \$15 per car, found unreasonable to extent that charges for the line-haul movement exceed a minimum of \$6.50 and maximum of \$10 per car, subsequently established. Reparation awarded. *Hilb & Bauer v. Director General*, as Agent, 279.

## SYSTEM.

Rates on petroleum products and other commodities, c. l. and l. c. l. between Shamrock and certain other points in Oklahoma, during federal control, found unreasonable to extent that the rates on traffic interchanged between the Sapulpa & Oil Field and Frisco railroads exceeded the single-line distance rates applicable in Oklahoma, and on traffic moving over those lines and the lines of other carriers, to extent they exceeded the single line rates plus two line arbitraries. Reparation awarded. *Cosden & Co. v. Director General*, as Agent, 113.

Both the legislative history and the provisions of the transportation act, 1920, make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation system for the nation, and the principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest. *New England Divisions*, 196 (198).

The Commission's power over divisions is founded upon the public interest. Carriers are mutually dependent parts of the transportation system; and, the public interest requires that all essential parts be maintained in effective working condition. *Id.* (199).

The group plan of increasing rates followed in *Increased Rates*, 1920, 58 I. C. C., 220, necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned and due regard for the public interest demands that the Commission give them fortuitous inequalities consideration in the fixing of divisions. *Id.* (199).

On shipments moving during federal control, bill of lading contained instructions as to both rate and route. Rate named was not applicable over any route of the receiving carrier, but was applicable over the route of another line to which shipper might have delivered the shipment had he so elected. *Held*: Shipments misrouted where both of the carriers at point of origin were federally controlled, since they were "being operated under a unified and coordinated national control and not in competition." *Mulkey Salt Co. v. Director General*, as Agent, 441.

66 I. C. C.

## SYSTEM—Continued.

Different rates were in effect over two routes between the same points. Routes practically the same in length and subject to the same transportation conditions. *Held*: In view of the fact that carriers were operated under a unified and coordinated national control, and not in competition, it was unreasonable for the Director General to maintain a higher rate over one route than contemporaneously applied over the other. *American Agricultural Chemical Co. v. Director General, as Agent, 650.*

## TARIFF CIRCULAR 18-A.

Following *Morris & Co., 64 I. C. C., 435*, rate on fresh frozen beef from Columbus, Ohio, to New York, N. Y., found unreasonable to extent it exceeded lower rate from London, Ohio, applicable under rule 77 of Tariff Circular 18-A. No request made for application of lower rate prior to movement but such rate subsequently established from Columbus. Reparation awarded. *Cincinnati Abattoir Co. v. Director General, as Agent, 65.*

Contention that lower rate remained in effect because new tariff carried a note that "This tariff contains no changes in rates from those published effective June 25, 1918," and because item naming the increased rate did not bear a symbol, indicating an increase over the previous rate as required by Tariff Circular 18-A, not sustained. Tariff publishing the increased rate and cancelling the previous tariff conformed with the essential requirements of the act and was lawfully on file with the Commission. *Hercules Mining Co. v. Director General, as Agent, 140 (141).*

Class rates on mixed or nitrating acid, in tank-car loads, from Hopatcong and Haskell, N. J., to Arlington, N. J., during federal control, found unreasonable to extent they exceeded lower commodity rates to North Newark, N. J., which lower rates could have been applied from Hopatcong and Haskell under Rule 77 of Tariff Circular 18-A. Reparation awarded. *Du Pont de Nemours & Co. v. Director General, as Agent, 291.*

Applicable tariff provided for the application to intermediate points of rates from or to the next more distant station when rates are not specifically published, subject to the general proviso, "Except as may be otherwise specifically provided in the tariff." *Held*: The publication of a "rate basis" to the intermediate points without corresponding "rates" on specific commodities did not operate to make inapplicable the intermediate clause. Shipments found overcharged and refund directed. *Standard Oil Co. v. Director General, as Agent, 472.*

Higher rate published in the same tariff from intermediate than from farther distant point. Rate from farther distant point published subject to Rule 77 of Tariff Circular 18-A. *Held*: Higher rate from intermediate point legally applicable but publication of lower rate from farther distant point subject to Rule 77 was in violation of the fourth section of the act and tantamount to an admission that the higher rate from the intermediate point was unreasonable. Reparation awarded. *Standard Asphalt & Refining Co. v. Director General, as Agent, 611.*

Fertilizer rate legally applicable and assessed on oyster shells from Apalachicola, Fla., to Mobile, Ala., composed of a combination to Montgomery, Ala., and thence back to Mobile, authorized under Rule 5 (b) of Tariff Circular 18-A, found unreasonable as compared with rates on crushed oyster shells from various southern points to numerous destinations for greater distances, and to extent it exceeded joint rate subsequently established. Reparation denied. *Gulf City Mfg. Co. v. Director General, as Agent, 763.*

## TARIFF INTERPRETATION.

Rule for disposition of fractions under general order No. 28 of the Director General applied only to rates quoted in dollars or dollars and cents per ton. Such rule did not, and could not, by any reasonable interpretation qualify another rule, which was complete in itself and specifically provided for the application of rates stated in cents per ton or other unit. Shipments found overcharged and reparation awarded. *Hercules Mining Co. v. Director General*, as Agent, 140.

Contention that lower rate remained in effect because new tariff carried a note that "This tariff contains no changes in rates from those published effective June 25, 1918" and because item naming the increased rate did not bear a symbol indicating an increase over the previous rate as required by Tariff Circular 18-A, not sustained. Tariff publishing the increased rate and cancelling the previous tariff conformed with the essential requirements of the act and was lawfully on file with the Commission. *Id.* (141).

Rates named in a tariff published after the issuance of general order No. 28 of the Director General, but not to become effective until after the effective date of that order, found subject to the increase of 25 per cent provided thereunder. *Growers Rice Milling Co. v. Director General*, as Agent, 165.

Applicable tariff provided for the application to intermediate points of rates from or to the next more distant station when rates are not specifically published, subject to the general proviso, "Except as may be otherwise specifically provided in the tariff." *Held*: The publication of a "rate basis" to the intermediate points without corresponding "rates" on specific commodities did not operate to make inapplicable the intermediate clause. Shipments found overcharged and refund directed. *Standard Oil Co. v. Director General*, as Agent, 472.

TAXES. *See* WAR TAX.

## TERMINAL CHARGES.

Proposed establishment of terminal charges in addition to line-haul rate, on fruits and vegetables delivered to Duane Street, New York, N. Y., when moving from New Jersey terminals of the Erie R. R., found not justified. *Fruits and Vegetables to Duane St., N. Y.*, 135.

TERRITORIAL JURISDICTION. *See* Jurisdiction.

THREE CARS. *See* MULTIPLE CAR SHIPMENTS.

## THROUGH AND LOCAL.

Through rate on wooden pipe from Tacoma, Wash., to Webak and Still, Oreg., exceeded the aggregate of intermediate rates to and from Blakes Junction, Oreg. Reparation denied owing to failure of complainant to prove payment of charges. *American Wood Pipe Co. v. Director General*, as Agent, 155.

A joint rate which exceeds the combination of intermediate rates contemporaneously applicable is *prima facie* unreasonable. *Id.* (156).

Rates on corn and oats from Ashland, Lexington, McLean, Rutland, Stanford, and Wenona, Ill., to Memphis, Tenn., exceeded the aggregates of intermediate rates to and from East St. Louis, Ill. Reparation denied for want of proof. *Clarke-Burke & Co. v. Director General*, as Agent, 265.

Rates on cork waste and ground cork, in mixed carloads, and on nails in bags and in kegs, l. c. l., from Beaver Falls, Pa., to Tallulah, La., exceeded the aggregates of intermediate rates to and from Vicksburg, Miss. Reparation awarded. *Tallulah Cotton Oil Co. v. A. & V. Ry. Co.*, 755.

## THROUGH ROUTES AND JOINT RATES.

Upon supplemental report, *Held*: In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, findings in 61 I. C. C., 132 and 145, wherein carriers' participation in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on their own rails was found to result in undue prejudice, reversed. *American Creosoting Co. v. Director General*, 54; *Southern Hardwood Traffic Assn. v. Director General*, 67.

In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, order of Commission suspending schedules under which carriers propose to withdraw existing transit arrangements on lumber moving via Memphis, Tenn., or Louisville, Ky., from points on the Rock Island in Arkansas and Louisiana to various northern points, vacated. Transit privileges on Lumber, 94.

Proposed schedules by which the application of through rates on coal from mines on the Western Maryland, in connection with the B. & O., to eastern destinations would be restricted to the route via Cumberland, Md., filed against the express wishes of the originating carrier and which would operate to deprive it of its long haul, found not justified. Routing on Coal from Western Maryland Ry. Mines, 108.

Prayer for establishment of, via a short line, denied where point served has better transportation service than most towns of its size in that it is reached by two trunk lines; the service which these lines are prepared to and do render is entirely adequate to the needs of the community as a whole; there was never any necessity for the construction of the short line; and if defendants were to participate in joint rates or absorb the charges of the short line, they would be building up a competitor at their own expense, depleting their revenues, and creating a dangerous precedent. *Beaver Sand Co. v. Director General*, as Agent, 285.

The mere fact that one common-carrier railroad has a physical connection with another is not of itself sufficient ground upon which to base an order requiring the establishment of joint rates over those roads. The question of whether or not they should be established is one calling for the exercise of the Commission's judgment upon the circumstances and conditions of each particular case, as the act provides that the Commission may and shall establish joint rates "whenever deemed by it to be necessary or desirable in the public interest." *Id.* (288-289).

While the existence of, would be a convenience and result in a financial saving to certain shippers, this fact alone does not warrant their establishment. *Id.* (289).

Contention that under section 15, paragraph (4) of the act the Commission can not require a carrier to continue to participate in through routes and joint rates on ground that it will secure greater revenue out of longer hauls via other routes, not sustained. Contention overlooks fact that the primary question is the justification of increased rates which will result. Furthermore, the showing made would justify the establishment of through routes and joint rates in the first instance. Rate Cancellation from Indiana to Ohio, 449 (450-451).



**TIME.**

Upon supplemental report, orders defining limits of United States standard Eastern and Central time zones, 51 I. C. C., 273, and 53 I. C. C., 208, modified so as to include Toledo, Ohio, within the standard Eastern time zone. Standard Time Zone Investigation, 566.

**TORT.**

The charging of an unreasonable rate is a tort, and the parties to such a rate are jointly and severally liable for any resulting damage. *International Nickel Co. v. Director General, as Agent*, 627 (628).

**TRACK STORAGE.**

Maintenance of track-storage charges on gasoline and other articles requiring "flammable" placards under regulations prescribed by the Commission, when held in tank cars on private tracks where ownership of the tracks and cars is the same, found not unreasonable or unlawful where the private tracks are described as "Railroad Premises" in a rule of carriers' tariffs. Charge has been in no way burdensome to shippers, and its purpose is to promote safety. *Western Petroleum Refiners' Asso. v. A. & R. R. Co.*, 58.

**TRANSCONTINENTAL RATES.**

Rates on fire brick from transcontinental groups A, D, E, and J to San Francisco and other California points, found not unduly prejudicial as compared with rates to north Pacific coast points. *Columbia Steel Co. v. Director General, as Agent*, 169.

Rates on tapoca, in packages, from Orange, Mass., to Pacific coast terminals found unreasonable to extent they exceeded lower rates on cassava flour and macaroni and noodles. Reparation awarded. *Minute Tapoca Co. v. Director General, as Agent*, 267.

Fifth-class rate charged on imported pickled sheepskins from Pacific coast ports to Atlantic seaboard destinations, found applicable but unreasonable to extent it exceeded lower commodity rate on domestic shipments of sheep slats (green), which lower commodity rate was subsequently established on imported pickled sheepskins. Reparation awarded. *Tanners' Council v. Director General, as Agent*, 415.

Domestic rates on import shipments of kapok, moving from San Francisco, Calif., to New York, N. Y., and Boston, Mass., assessed as a result of the cancellation of all import rates by the Director General under general order No. 28, found unreasonable to extent it exceeded import rate subsequently established on feathers and certain kinds of fiber with which kapok is fairly comparable. Reparation awarded. *Dutton Co. v. Director General, as Agent*, 663.

**TRANSIT ARRANGEMENTS.****In General:**

Upon supplemental report, *Held*: In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, findings in 61 I. C. C., 182 and 145, wherein carriers' participation in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on their own rails was found to result in undue prejudice, reversed. *American Creosoting Co. v. Director General*, 54; *Southern Hardwood Traffic Asso. v. Director General*, 67.

## TRANSIT ARRANGEMENTS—Continued.

## In General—Continued.

In view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, order of Commission suspending schedules under which carriers propose to withdraw existing transit arrangements on lumber moving via Memphis, Tenn., or Louisville, Ky., from points on the Rock Island in Arkansas and Louisiana to various northern points, vacated. Transit Privileges on Lumber, 94.

Shipments which move from a point of origin to final destination with a transit arrangement are regarded as moving under a single continuous contract of carriage. *Capital Warehouse Co. v. Director General*, as Agent, 683 (685).

Creosoting: Upon supplemental report and in view of the opinion of the Supreme Court in *C. R. R. Co. of N. J. v. United States*, decided December 5, 1921, finding in 61 I. C. C., 145, wherein carriers' participation in joint rates with connecting lines upon whose rails transit arrangements are permitted while denying similar arrangements at points on its own rails was found to result in undue prejudice, reversed. *American Creosoting Co. v. Director General*, 54.

Milling: Higher charges published in separate tariffs found applicable to shipments moving outbound from transit point and the publication by the inbound carrier of a tariff naming lower charges without the concurrence of its connections found to be a direct contravention of the Commission's rules under section 6 of the act, and shipper is justified in relying upon the lower basis of rates thus offered. Reparation awarded. *Brenner Lumber Co. v. Director General*, as Agent, 595.

Storage: Collection at transit point of switching charges of a belt line which delivered shipments to complainant for storage and to outbound carriers for movement to final destination, and which were in addition to the through rate and transit charges, found illegal. Shipments which move from a point of origin to final destination under transit arrangements are regarded as moving under a single continuous contract of carriage. Reparation awarded. *Capital Warehouse Co. v. Director General*, as Agent, 683.

## TRANSPORTATION CONDITIONS.

Penalty charge of \$10 per car per day on lumber held for reconsignment beyond 48 hours after 7 a. m. of day following notice of arrival found not to have been unreasonable or otherwise unlawful in the past. However, under present conditions, with a great number of idle freight cars and an entire absence of congestion throughout the country, the charge is, and while present conditions continue will be, unreasonable. *American Wholesale Lumber Asso. v. Director General*, as Agent, 393.

TRIPLE CARLOADS. See MULTIPLE CAR SHIPMENTS.

## UNIFORM BILL OF LADING.

Upon petition for modification of the Commission's former report, 64 I. C. C., 357, service of which was made in compliance with rule XV of the Rules of Practice, and to which no objections have been raised, rules and regulations prescribing forms of uniform domestic bill of lading and live-stock contract, so as to eliminate doubt as to the liability of the consignee for charges and remove any opportunity for confusion, approved. Domestic Bill of Lading and Live Stock Contract, 63.

UNLOADING. See LOADING AND UNLOADING.

66 I. C. C.

## VALUATION.

Preliminary reports of the Commission's bureau of valuation submitted as evidence to show the cost of reproduction new of a bridge over the Hudson River at Poughkeepsie, N. Y., considered by the Commission in passing upon the reasonableness of constructive mileage over such bridge. Constructive Mileage over Poughkeepsie Bridge, 230 (232).

## VOLUME OF TRAFFIC.

Cost of service includes not only expense of operation but taxes and the proper capital charges incident to the continued functioning of the property. The Commission recognizes this when it makes allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to interchange traffic may likewise be greater, relatively, where this density is low. New England Divisions, 196 (199).

While volume of movement is an important element to be considered in arriving at a reasonable rate, an excessive rate can not be justified merely on account of the fact that movements thereunder are infrequent. The maintenance of a rate that is too high may be one of the causes of which a light movement is the effect. United Verde Extension Mining Co. v. U. V. & P. Ry. Co., 377 (379).

VOLUNTARY REDUCTION. *See* REDUCTION IN RATES (BY CARRIERS).

## WAGES.

It is inevitable that when wages are increased the carrier that produces less ton-miles per unit of labor will suffer disproportionately. New England Divisions, 196 (199).

## WAR TAX.

The Commission is without jurisdiction to award reparation for excess war taxes paid. Weaver Bros. Lumber Co. v. Director General, as Agent, 297 (299).

## WATER CARRIER.

Ore Carrying Corporation, a water line operating under a common arrangement with a rail carrier for the continuous carriage of through interstate traffic, found to be a common carrier subject to the act, which may lawfully receive from its trunk line connections reasonable divisions of joint interstate rates, under appropriate tariffs. Ore Carrying Corporation v. C. R. R. Co. of N. J., 311.

WEIGHT. *See also* MINIMUM WEIGHT.

Actual: Carriers should not be required to accept weights ascertained by shippers on private scales. Providence Fruit & Produce Exchange v. Director General, as Agent, 300 (301).

## Estimated:

Charges on sweet potatoes based on scale weights, and on peaches based upon estimated weights, obtained at points of origin, found not to have been unreasonable. Shippers did not weigh shipments at destinations; estimated weights sought would not fairly represent actual weights; and a check of tariffs several years back showed no provision for estimated weights on these commodities. Oyler & Son v. L. & N. R. R. Co., 175.

